

**CITY OF MONTCLAIR
AGENDA FOR REGULAR CITY COUNCIL,
SUCCESSOR AGENCY, MONTCLAIR HOUSING CORPORATION,
MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR COMMUNITY
FOUNDATION MEETINGS**

To be held in the Council Chambers
5111 Benito Street, Montclair, California

December 2, 2019

7:00 p.m.

As a courtesy, please silence your cell phones and other electronic devices while the meeting is in session.

Persons wishing to speak on an agenda item, including closed session items, are requested to complete a yellow Speaker Information Card located at the entrance of the Council Chambers and present it to the City Clerk prior to consideration of the item. The Mayor/Chair (or the meeting's Presiding Officer) will recognize those who have submitted a card at the time of the item's consideration by the City Council/Board of Directors/Commissioners, and speakers may approach the podium to provide comments on the item at that time.

Audio recordings of the CC/SA/MHC/MHA/MCF meetings are available on the City's website at www.cityofmontclair.org and can be accessed by the end of the next business day following the meeting.

- I. CALL TO ORDER** City Council [CC], Successor Agency Board [SA],
Montclair Housing Corporation Board [MHC],
Montclair Housing Authority Commission [MHA],
Montclair Community Foundation Board [MCF]

II. INVOCATION

In keeping with our long-standing tradition of opening our Council meetings with an invocation, this meeting may include a nonsectarian invocation. Such invocations are not intended to proselytize or advance any faith or belief or to disparage any faith or belief. Neither the City nor the City Council endorses any particular religious belief or form of invocation.

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL

V. PRESENTATIONS

- A. Ceremonial Swearing-In of Newly Appointed Council Member Corysa Martinez

VI. PUBLIC COMMENT

This section is intended to provide members of the public with an opportunity to comment on any subject that does not appear on this agenda. Each speaker will be afforded up to five minutes to address the City Council/Boards of Directors/Commissioners. (Government Code Section 54954.3)

Under the provisions of the Brown Act, the meeting bodies are prohibited from participating in substantial discussion of, or taking action on items not listed on the agenda.

VII. PUBLIC HEARINGS

Page No.

- A. First Reading — Introduction of Ordinance No. 19-988 Amending Specific Chapters of Title 10 of the Montclair Municipal Code Related to the Adoption of Building Codes to Regulate Construction in the City of Montclair and Establishing January 15, 2020 as the Effective Date of the Codes [CC]

Consider Setting a Public Hearing for Second Reading and Adoption of Ordinance No. 19-988 for Monday, December 16, 2019, at 7:00 p.m. in the City Council Chambers [CC]

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VIII. CONSENT CALENDAR

- A. Approval of Minutes

1. Adjourned Meeting — October 7, 2019 [CC]
2. Regular Joint Meeting — November 18, 2019 [CC/SA/MHC/MHA/MCF]

B. Administrative Reports	
1. Consider Approval of the City of Montclair Capital Improvement Program for Fiscal Years 2019–20 through 2023–24 [CC]	
Consider Authorizing the Appropriation of Funds as Indicated for Each of the FY 2019–20 Projects Listed in the Proposed Capital Improvement Program [CC]	15
2. Consider Confirming the Mayor’s Recommendation to Reappoint Mayor Pro Tem Raft to a Four–Year Term on the West Valley Mosquito and Vector Control District Board [CC]	17
3. Consider Approval of Warrant Register & Payroll Documentation [CC]	19
4. Consider Approval of the Montclair Housing Authority Annual Report Pursuant to Section 3416.1(f) of the Health And Safety Code (SB 341) for Fiscal Year 2018–19 [CC/MHA]	20
5. Consider Review and Acceptance of the Montclair Housing Authority Annual Report for Fiscal Year 2018–19 [MHA]	29
C. Agreements	
1. Consider Approval of Agreement No. 19–102 to Retain the Law Offices of Richard S. Powell to Provide Legal and Consulting Services Related to Workers’ Compensation Matters [CC]	33
2. Consider Approval of Agreement No. 19–103 with WCSG and Mark 43 for Computer–Aided Dispatch and Records Management Software Upgrades and Services [CC]	
Consider Authorizing a \$77,087.53 Appropriation from the Federal Asset Forfeiture Fund for Costs Related to Agreement No. 19–103 and for the Purchase of Associated Server Hardware [CC]	39
D. Resolutions — None	

IX. PULLED CONSENT CALENDAR ITEMS

X. COUNCIL WORKSHOP

A. Village at Montclair Mixed–Use Development [CC]

(The City Council may consider scheduling this item as a special joint meeting of the City Council and Planning Commission on Monday, December 16, 2019, at 5:45 p.m. in the City Council Chambers)

XI. COMMUNICATIONS

A. City Department Reports

1. Human Services Department — Holiday Events
2. Public Works Department — I–10 Widening Project Construction Update

B. City Attorney

1. Request to Meet in Closed Session Pursuant to GC §54957.6 Regarding Conference with City’s Designated Labor Negotiator Edward C. Starr [CC]

Agency: City of Montclair

Employee Assocs.: Management, Montclair City Confidential Employees Association, Montclair General Employees Association, Montclair Fire Fighters Association, and Montclair Police Officers Association

C. City Manager/Executive Director	
D. Mayor/Chairperson	
1. Reorganization of 2018-20 Council Committee/Liaison Assignments [CC]	77
E. Council Members/Directors	
F. Committee Meeting Minutes (<i>for informational purposes only</i>)	
1. Real Estate Committee Meeting — October 21, 2019 [CC]	78
2. Personnel Committee Meeting — November 18, 2019 [CC]	80
XII. CLOSED SESSION	
XIII. CLOSED SESSION ANNOUNCEMENTS	
XIV. ADJOURNMENT	

The next regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board will be held on Monday, December 16, 2019, at 7:00 p.m. in the City Council Chambers.

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the Acting Bodies after publication of the Agenda packet are available for public inspection in the City Clerk's Office at 5111 Benito Street, Montclair, California, between 7:00 a.m. and 6:00 p.m., Monday through Thursday.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (909) 625-9416. Notification 2 business days prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)

I, Andrea M. Phillips, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on November 27, 2019.



AGENDA REPORT

DATE: DECEMBER 2, 2019

FILE I.D.: CDV100

SECTION: PUBLIC HEARINGS

DEPT.: COMMUNITY DEV.

ITEM NO.: A

PREPARER: M. WESTERLIN

SUBJECT: FIRST READING — INTRODUCTION OF ORDINANCE NO. 19-988 AMENDING SPECIFIC CHAPTERS OF TITLE 10 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO THE ADOPTION OF BUILDING CODES TO REGULATE CONSTRUCTION IN THE CITY OF MONTCLAIR AND ESTABLISHING JANUARY 15, 2020 AS THE EFFECTIVE DATE OF THE CODES

CONSIDER SETTING A PUBLIC HEARING FOR SECOND READING AND ADOPTION OF ORDINANCE NO. 19-988 ON MONDAY, DECEMBER 16, 2019, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS

REASON FOR CONSIDERATION: Amendments to the Montclair Municipal Code require public hearing review and approval by the City Council. A copy of proposed Ordinance No. 19-988 amending specific chapters of Title 10 of the Montclair Municipal Code related to adoption of Building Codes to regulate construction in the City of Montclair is attached for City Council review.

The City Council is also requested to set a public hearing for the second reading and adoption of Ordinance No. 19-988 at its next regular meeting on Monday, December 16, 2019, at 7:00 p.m. in the City Council Chambers.

BACKGROUND: The California Health and Safety Code establishes a Building Standards Commission with duties to review, approve, codify, and publish building standards every three years in its triennial edition of the California Building Standards Code. These Codes, commonly known as Title 24, incorporate the latest editions of the model codes that apply to all jurisdiction in the State. The Commission also establishes a date for the updated codes to become effective throughout the State. The effective date established for this triennial edition is January 15, 2020. The adoption of these Codes regulate the fabrication, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area or other improvements to real property; maintenance of all buildings or structures in the City of Montclair; and provide for the issuance of permits and collection of fees.

Examples of significant changes to the Codes are:

- Construction documents must provide more detail on the application of materials used for waterproofing on balconies, decks, and weather-exposed walking surfaces.
- No fewer than two exit doors shall be provided for any sleeping room in excess of 1,000 square feet.
- Live/work units shall be permitted to be constructed as one- and two-family dwellings or townhouses in accordance with the California Residential Code as long as they are not greater than 3,000 square feet. The non-residential portion shall

remain on the first floor and be less than 50 percent of the living area. No more than five employees/workers are permitted.

- Attics intended to be used as habitable spaces are required to be protected with fire sprinklers.
- The occupant load factor (OLF) has been increased to allow a higher occupancy for specific types of business occupancy classifications to allow additional occupants.
- New standards for integrated photovoltaic roof panels for use on roof slopes of 2:12 or greater.
- Updated the standards/dimensions for the use of heavy timber (HT) structural members for use in the construction of high rise wood buildings.
- In new construction, elevators must have a visual text and video-based, 24/7 live interactive system.
- Photovoltaic (e.g., solar panels) shall be mandatory for all new single-family residences.
- Home Energy Rating System (HERS) certification to show kitchen exhaust hood ventilation meets 100 CFM requirement.
- Garages are required to have a minimum of one 120-volt, 20-amp branch circuit.
- Meeting rooms are required to have 120-volt, 20-amp wall and floor receptacles.
- Extensive changes made throughout the article relating to Photovoltaic (PV) systems.
- An expanded list of areas where tamper-resistant receptacles are required including but not limited to residential, hotels, child care facilities, etc.
- An expanded list of where GFCI protection is required for appliances.
- Require electric vehicle charging infrastructure for new parking areas and additions to existing parking.
- New and expanded surface parking areas shall be required to be shaded by trees per updated code requirements.
- New multifamily projects with 17 or more dwelling units and providing parking to the occupants shall prewire three percent of the parking spaces for the installation of future electric vehicle (EV) chargers.

FISCAL IMPACT: The City Council's adoption of Ordinance No. 19-988 would have no fiscal impact.

RECOMMENDATION: Staff recommends the City Council take the following actions:

1. Introduce and conduct first reading of Ordinance 19-988 amending specific chapters of Title 10 of the Montclair Municipal Code related to adoption of Building Codes to regulate construction in the City of Montclair and establishing January 15, 2020 as the effective date of the codes.
2. Set a public hearing for second reading and adoption of Ordinance No. 19-988 for Monday, December 16, 2019, at 7:00 p.m. in the City Council Chambers.

ORDINANCE NO. 19-988

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING SPECIFIC CHAPTERS OF TITLE 10 OF THE MONTCLAIR MUNICIPAL CODE AND ADOPTING BY REFERENCE THE 2019 EDITION OF THE CALIFORNIA BUILDING CODE, VOLUMES 1 AND 2, INCLUDING APPENDIX CHAPTERS C AND F; THE 2019 EDITION OF THE CALIFORNIA RESIDENTIAL CODE; THE 2019 EDITION OF THE CALIFORNIA PLUMBING CODE; THE 2019 EDITION OF THE CALIFORNIA ELECTRICAL CODE; THE 2019 EDITION OF THE CALIFORNIA MECHANICAL CODE; THE 2019 EDITION OF THE CALIFORNIA GREEN BUILDING STANDARDS CODE; THE 2019 EDITION OF THE CALIFORNIA FIRE CODE, INCLUDING APPENDIX CHAPTERS A, B, BB, C, CC, H, F, AND K; AND THE 2018 EDITION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE; TOGETHER WITH CERTAIN AMENDMENTS, ADDITIONS, DELETIONS, AND EXCEPTIONS INCLUDING FEES AND PENALTIES

WHEREAS, the California Health and Safety Code establishes a Building Standards Commission whose duties include approval, codification, and publication of building standards in a triennial edition of the California Building Standards Code, commonly called Title 24; and

WHEREAS, the Building Standards Commission also establishes a date that these codes become effective throughout the state; and

WHEREAS, adoption of these codes would regulate the fabrication, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area, or other improvements to real property; maintenance of all buildings or structures in the City of Montclair; and provision for issuance of permits and collection of fees therefore; and

WHEREAS, Building Standards Code does *not* include adoption of procedural ordinances by a city or other agency related to civil, administrative, or criminal procedures and remedies available for enforcing code violations.

NOW, THEREFORE, THE CITY THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I. The following definitions are deleted from Section 10.02.010, "Definitions," of Chapter 10.02 of the Montclair Municipal Code:

~~**Fire control center** means a central location within a high-rise building for Fire Department operations and monitoring of such systems and equipment as required in this title. For the purpose of this section, fire control center also means fire command center.~~

~~**High-rise building**, in other than Group 1-2 occupancies, means every building of any type of construction or occupancy having floors used for human occupancy located more than 45 feet above the lowest floor level having building access (see California Building Code Section 403.1.2), except buildings used as hospitals as defined in Health and Safety Code Section 1250.~~

SECTION II. Section 10.08.010 of the Montclair Municipal Code is hereby amended to read as follows:

10.08.010. Adoption.

Except as provided in this Chapter, those certain building codes known and designated as the California Building Code, 2019 Edition, Volumes 1 and 2, including Appendix Chapters "I," and "J," based on the 2018 International Building Code as published by the International Code Council, shall be and become the Building Codes of the City of Montclair for regulating the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building and/or structure or any appurtenances connected or attached to such buildings or structures throughout the City. The California Building Code and its appendix chapters will be on file for public examination in the office of the Building Official.

SECTION III. The following language under Section 10.08.020 of the Montclair Municipal Code is hereby amended to read as follows:

10.08.020. Building Code amendments.

Item 9 under "Building" is hereby amended to read as follows:

Prefabricated swimming pools accessory to a R-3 occupancy that are capable of holding liquid less than 12 inches in depth, and are installed entirely above ground.

SECTION IV. Section 10.20.010 of the Montclair Municipal Code is hereby amended to read as follows:

10.20.010. Adoption.

Except as provided in this Chapter, the California Electrical Code, 2019 Edition, based on the 2018 National Electrical Code as published by the National Fire Protection Association, shall be and become the Electrical Code of the City of Montclair, regulating all installation, arrangement, alteration, repair, use, and other operation of electrical wiring, connections, fixtures, and other electrical appliances on premises within the City. The California Electrical Code is on file for public examination in the office of the Building Official.

The 2019 Edition of the California Electrical Code is hereby adopted with no amendments.

SECTION V. Article I, Article II, and Article III of Chapter 10.28 of the Montclair Municipal Code are hereby deleted and replaced with the following:

10.28.010. Adoption.

There is adopted by the City Council a code known as the California Fire Code, 2019 Edition, based on the 2018 International Fire Code as published by the "International Code Council," and referenced as the California Code of Regulations, Title 24, Part 9, including Appendices A, B, BB, C, CC, F, H, and K. The California Fire Code and its appendix chapters shall regulate the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conservation, occupancy, equipment, use, height, area and maintenance of all buildings and/or structures in the City for all fire related issues. The California Fire Code will be on file for public examination in the Office of the Building Official.

10.28.020. Scope and Administration.

A. Section 110.4 Violation penalties is hereby revised as follows:

110.4 Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of either a misdemeanor, infraction or both as prescribed in Section 110.4.2 and 110.4.3. Penalties shall be as prescribed in local ordinance. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

B. Section 110.4.2 Infraction is hereby added as follows:

110.4.2 Infraction. Except as provided in Section 110.4.3, persons operating or maintaining any occupancy, premises or vehicle subject to this code that shall permit any fire or life safety hazard to exist on premises under their control shall be guilty of an infraction.

C. Section 110.4.3 Misdemeanor is hereby added as follows:

110.4.3 Misdemeanor. Persons who fail to take immediate action to abate a fire or life safety hazard when ordered or notified to do so by the chief or a duly authorized representative, or who violate the following sections of this code, shall be guilty of a misdemeanor:

- (1) 104.11.2 Obstructing operations
- (2) 104.11.3 Systems and Devices
- (3) 108.6 Overcrowding

- (4) 110.3.2 Compliance with Orders and Notices
- (5) 112.4 Failure to comply
- (6) 305.4 Deliberate or negligent burning
- (7) 308.1.2 Throwing or placing sources of ignition
- (8) 310.7 Burning Objects
- (9) 3107.4 Open or exposed flames

D. Fire Service Features is adopted in its entirety with the following amendment:

Section 501.3 Construction documents is revised as follows:

501.3 Construction documents. Construction documents for proposed fire apparatus access, location of fire lanes, security gates across fire apparatus roads and construction documents and hydraulic calculations for fire hydrant systems shall be submitted to the fire department for review and approval prior to construction. The design shall be in accordance with this code, national standards, and the City of Montclair Guideline for Fire Department Access & Water Requires for Commercial & Residential Development, and the City of Montclair Guideline for Underground Piping for Private Hydrants & Sprinkler Supply Line.

10.28.030 Fire Protection and Life Safety Systems

Section 903.2 Where required is hereby amended as follows:

903.2 Where required. Approved automatic sprinkler systems in buildings and structures shall be required in the locations described in Sections 903.2.1 through 903.2.12 and as follows:

- (1) Every structure hereafter constructed, erected, or moved onto a property, regard-less of separation walls as outlined in the California Building Code, shall have an approved automatic fire sprinkler system installed throughout therein.
- (2) Every structure, except Group R, Division 3, and Group R, Division 4 occupancies, here-after remodeled, rebuilt, or renovated where such costs exceed fifty (50) percent of the assessed valuation as determined by the San Bernardino County Tax Assessor shall have an approved automatic fire sprinkler system installed throughout therein.
- (3) Group R, Division 3, and Group R, Division 4 occupancies, including attached Group U occupancies, where fifty (50) percent or more of the existing floor area is hereafter added to, remodeled, rebuilt, or renovated shall have an approved automatic fire sprinkler system installed throughout therein.
- (4) Every approved automatic fire sprinkler system shall have one (1) exterior Audible Device, connected to water flow alarm device installed on each riser.
- (5) Each approved automatic fire sprinkler system shall maintain a stock of at least one spare sprinkler that corresponds to the types and temperatures of those installed in the system. The stock of spare sprinklers and wrench shall be stored in a cabinet which shall be mounted as close to the system riser as practical.

Exceptions:

- (1) Spaces or areas in telecommunications buildings used exclusively for telecommunications equipment, associated electrical power distribution equipment, batteries, and standby engines, provided those spaces or areas are equipped throughout with an automatic fire alarm system and are separated from the remainder of the building by fire barriers consisting of not less than one-hour fire-resistance-rated walls and two-hour fire-resistance-rated floor/ceiling assemblies.
- (2) Automatic fire sprinkler protection for fixed guideway transit systems shall be as per Section 903.2.17.
- (3) Outdoor, detached storage facilities of 200 square feet or less.
- (4) Any work for which a building permit is not required.

- (5) Block walls.
- (6) Swimming pools and spas.
- (7) Lattice patio covers.
- (8) Reroofing.
- (9) Decks.
 - (i) Except a covered deck constructed as part of a new building or structure.
- (10) Gazebos.
- (11) Solar photovoltaic panels supported by a structure over parking stalls where the panels constitute the roof.

10.28.040 Sprinkler and Alarm requirements

A. Section 903.3.1 Standards is hereby amended as follows:

903.3.1 Standards. Sprinkler systems shall be designed and installed in accordance with Section 903.3.1.1, unless otherwise permitted by Sections 903.3.1.2 and 903.3.1.3, and the following:

- (1) Every sprinkler system shall have at least one (1) fire department connection located within fifty (50) feet of a fire hydrant as approved.

Exceptions:

- (i) Sprinkler systems complying with NFPA 13 D.
- (ii) Sprinkler systems supplying fewer than twenty (20) heads.
- (2) Minimum sprinkler system design requirements for new industrial "spec" buildings shall be as required for NFPA 13 (latest edition), extra hazard (group 1).
- (3) NFPA 13 R sprinkler systems shall utilize separate underground water mains to supply the fire sprinkler system and the domestic water supply.

B. Section 903.4, Sprinkler system supervision and alarms, is hereby amended by modifying item 1, deleting item 5, and renumbering the Exceptions as follows:

- (1) Automatic sprinkler systems protecting one- and two-family dwellings.
- (2) Limited area systems serving fewer than 20 sprinklers.
- (3) Automatic sprinkler systems installed in accordance with NFPA 13R where the common supply main is used to supply both the domestic and automatic sprinkler system, and a separate shutoff valve for automatic sprinkler system is not provided.
- (4) Jockey pump control valves that are sealed or locked in the open position.
- (5) Valves controlling the fuel supply to fire pump engines that are sealed or locked in the open position.
- (6) Trim valves to pressure switches in dry, pre-action and deluge sprinkler systems that are sealed or locked in the open position.

C. Section 905.4 Location of Class I standpipe hose connections is hereby amended by adding items 7 as follows:

- (7) The centerline of the 2.5 inch (63.5 mm) outlet shall be no less than 18 inches (457.2 mm) and no more than 24 inches above the finished floor.

D. Section 907.1.6 False Alarms is hereby added as follows:

907.1.6 False Alarms. More than two (2) false alarms transmitted from any required or not required fire alarm system in a one (1) month period of time, or three (3) false alarms transmitted from any required or not required fire alarm system in any two (2) month period of time shall result in an assessment of fees for services provided by the Fire Department for all subsequent false alarms in the remainder of the calendar year.

10.28.050 Explosives and Fireworks

A. Section 5601.2.5 Retail Fireworks is hereby added as follows:

5601.2.5 Retail Fireworks. The storage, use, sale, possession, and handling of fireworks 1.4G (commonly referred to as Safe & Sane) and fireworks 1.3G is prohibited. Exception: Fireworks 1.4G and fireworks 1.3G may be part of an electrically fired public display when permitted and conducted by a licensed pyrotechnic operator

B. Section 5601.3.6 Seizure of Fireworks is hereby added as follows:

5601.3.6 Seizure of Fireworks. The fire code official shall have the authority to seize, take, and remove all fireworks stored, sold, offered for sale, used or handled in violation of the provisions of Title 19 CCR, Chapter 6. Any seizure or removal pursuant to this section shall be in compliance with all applicable statutory, constitutional, and decisional law.

C. Section 5608.2 Firing is hereby added as follows:

5608.2 Firing. All fireworks displays shall be electrically fired.

D. NFPA 13, 2016 Edition, Standard for the Installation of Sprinkler Systems is hereby amended as follows:

Section 6.7.3 is hereby revised as follows:

6.7.3 Fire department connections (FDC) shall be of an approved type. The FDC shall contain a minimum of two 2 ½" inlets. The location shall be approved and be no more than 50 feet from a public hydrant. The FDC may be located within 50 feet of a private fire hydrant when approved by the fire code official. The size of piping and the number of inlets shall be approved by the fire code official. If acceptable to the water authority, it may be installed on the backflow assembly. Fire department inlet connections shall be painted OSHA safety red. When the fire sprinkler density design requires 500 gpm (including inside hose stream demand) or greater, or a standpipe system is included, four 2 ½" inlets shall be provided.

Section 8.3.3.1 is hereby revised as follows:

8.3.3.1. When fire sprinkler systems are installed in shell buildings of undetermined use (Spec Buildings) other than warehouses (S occupancies), fire sprinklers of the quick-response type shall be used. Use is considered undetermined if a specific tenant/occupant is not identified at the time the fire sprinkler plan is submitted. Sprinklers in light hazard occupancies shall be one of the following:

- (1) Quick-response type as defined in 3.6.4.8
- (2) Residential sprinklers in accordance with the requirements of 8.4.5
- (3) Quick response CMSA sprinklers
- (4) ESFR sprinklers
- (5) Standard-response sprinklers used for modifications or additions to existing light hazard systems equipped with standard-response sprinklers
- (6) Standard-response sprinklers used where individual standard-response sprinklers are replaced in existing light hazard systems

Section 8.15.1.2.7 is hereby revised as follows:

8.15.1.2.7 Concealed spaces filled with noncombustible insulation shall not require sprinkler protection when approved by the fire code official.

Section 11.1.1.1 is hereby added as follows:

11.1.1.1 When fire sprinkler systems are required in buildings of undetermined use other than warehouses, they shall be designed and installed to have a fire sprinkler density of not less than that required for an Ordinary Hazard Group 2 use, with no reduction(s) in density or design area. Warehouse fire sprinkler systems shall be designed to Figure 16.2.1.3.2 (d) curve "G". Use is considered undetermined if a specific tenant/occupant is not identified at the time the sprinkler plan is submitted. Where a subsequent occupancy requires a system with greater capability, it shall be the responsibility of the occupant to upgrade the system to the required density for the new occupancy.

E. NFPA 13D 2016 Edition, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes is hereby amended as follows:

(1) Section 4.1.3 is hereby added as follows:

4.1.3 Stock of Spare Sprinklers.

4.1.3.1. A supply of at least two sprinklers for each type shall be maintained on the premises so that any sprinklers that have operated or been damaged in any way can be promptly replaced.

4.1.3.2 The sprinklers shall correspond to the types and temperature ratings of the sprinklers in the property.

4.1.3.3 The sprinklers shall be kept in a cabinet located where the temperature to which they are subjected will at no time exceed 100 of (38oC).

4.1.3.4 A special sprinkler wrench shall be provided and kept in the cabinet to be used in the removal and installation of sprinklers. One sprinkler wrench shall be provided for each type of sprinkler installed.

(2) Section 7.1.2 is hereby revised to read as follows:

7.1.2 The system piping shall not have a separate control valve unless supervised by a central station, proprietary, or remote station alarm service.

F. NFPA 24, 2016 Edition, Standard for the Installation of Private Fire Service Mains and Their Appurtenances is hereby amended to read as follows:

(1) Section 1.1.1 This standard and the City of Montclair’s Underground Guideline shall cover the minimum requirements for the installation of private fire service mains and their appurtenances, which include supplying the following:

1. Automatic sprinkler systems
2. Open sprinkler systems
3. Water spray fixed systems
4. Foam systems
5. Private hydrants
6. Monitor nozzles or standpipe systems with reference to water supplies
7. Hose houses

G. Appendices

Appendix B is adopted in its entirety with the following amendments.

(1) Table B105.1 (1) is hereby revised as follows:

**TABLE B105.1(1)
REQUIRED FIRE-FLOW FOR ONE- AND TWO-FAMILY DWELLINGS, GROUP R-3
AND R-4 BUILDINGS AND TOWNHOUSES**

CALCULATION AREA (square feet)	AUTOMATIC SPRINKLER SYSTEM (Design Standard)	MINIMUM FIRE-FLOW (gallons per minute)	FLOW DURATION (hours)
0 - 3,600	No automatic sprinkler system	1,000	1
3,601 and greater	No automatic sprinkler system	Value in Table B105.1(2)	Duration in Table B105.1(2) at the required fire-flow rate
0 - 3,600	Section 903.3.1.3 of the California Fire Code or Section 313.3 of the California Residential Code	750	3/4
3,601 and greater	Section 903.3.1.3 of the California Fire Code or Section 313.3 of the California Residential Code	½ value in Table B105.1(2) but not less than 1500	1

For SI: 1 square foot = 0.0929 m², 1 gallon per minute = 3.785 L/m

(2) Table B105.2 is hereby revised as follows:

**TABLE B105.2
REQUIRED FIRE-FLOW FOR BUILDINGS OTHER THAN ONE- AND TWO-FAMILY
DWELLINGS, GROUP R-3 AND R-4 BUILDINGS AND TOWNHOUSES**

AUTOMATIC SPRINKLER SYSTEM (Design Standard)	MINIMUM FIRE-FLOW (gallons per minute)	FLOW DURATION (hours)
No automatic sprinkler system	Value in Table B105.1(2)	Duration in Table B105.1(2)
Section 903.3.1.1 or Section 903.3.1.2 of the California Fire Code	50% of the value in Table B105.1(2) but not less than 1500	Duration in Table B105.1(2)

For SI: 1 square foot = 0.0929 m², 1 gallon per minute = 3.785 L/m

- (3) Appendix BB is adopted in its entirety without amendments.
- (4) Appendix C is adopted in its entirety without amendments.
- (5) Appendix CC is adopted in its entirety without amendments.

10.28.060 Explosives and Fireworks

Chapter 56 Explosives and Fireworks California Fire Code Chapter 56 is adopted in its entirety with the following amendments:

Section 5601.2.5 Retail Fireworks is hereby added as follows:

5601.2.5 Retail Fireworks. The storage, use, sale, possession, and handling of fireworks 1.4G (commonly referred to as Safe & Sane) and fireworks 1.3G is prohibited. Exception: Fireworks 1.4G and fireworks 1.3G may be part of an electrically fired public display when permitted and conducted by a licensed pyrotechnic operator

Section 5601.3.6 Seizure of Fireworks is hereby added as follows:

5601.3.6 Seizure of Fireworks. The fire code official shall have the authority to seize, take, and remove all fireworks stored, sold, offered for sale, used or handled in violation of the provisions of Title 19 CCR, Chapter 6. Any seizure or removal pursuant to this section shall be in compliance with all applicable statutory, constitutional, and decisional law.

Section 5608.2 Firing is hereby added as follows:

5608.2 Firing. All fireworks displays shall be electrically fired.

SECTION VI. Sections 10.30.010 and 10.30.020 of the Montclair Municipal Code are hereby amended to read as follows:

10.30.010. Adoption.

Except as provided in this Chapter, the California Green Standards Code, 2019 Edition, as published by the California Building Standards Commission, shall be and become the Green Building Standards Code of the City of Montclair, regulating and controlling the planning, design, operation, use and occupancy of every newly constructed building or structure in the City. The California Green Building Standards Code shall be on file for public examination in the office of the Building Official.

10.30.020. Green Building Standards Code amendments.

The 2019 Edition of the California Green Building Standards Code is hereby adopted with no amendments.

SECTION VII. Section 10.32.10 of the Montclair Municipal Code is hereby amended to read as follows:

10.32.10. Adoption.

Except as provided in this chapter of the International Property Maintenance Code, 2018 Edition as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, is referenced to and, by such reference, incorporated in this chapter and adopted as the Property Maintenance Code of the City of Montclair, except as certain portions are hereinafter specifically amended. One copy of the Property Maintenance Code certified by the City Clerk of the City of Montclair shall be filed and kept in the Building Division for use and examination by the public.

The 2018 Edition of the International Property Maintenance Code is hereby adopted with no amendments.

SECTION VIII. Sections 10.36.010 and 10.36.020 of the Montclair Municipal Code are hereby amended to read as follows:

10.36.010. Adoption.

Except as provided in this Chapter, the California Mechanical Code, 2019 Edition, based on the 2018 Uniform Mechanical Code as published by the International Association of Plumbing and Mechanical Officials (IAPMO), shall be and become the Mechanical Code of the City of Montclair, regulating and controlling the design, construction, installation, quality of materials, location, operation, and maintenance of heating, ventilating, cooling, refrigeration systems, incinerators, and other miscellaneous heat-producing appliances. The California Mechanical Code is on file for public examination in the office of the Building Official.

10.36.020. Mechanical Code amendments.

The 2019 Edition of the California Mechanical Code is hereby adopted with no amendments.

SECTION IX. Sections 10.40.010 and 10.40.020 of the Montclair Municipal Code are hereby amended to read as follows:

10.40.010. Adoption.

Except as provided in this Chapter, the California Plumbing Code, 2019 Edition, based on the 2018 Uniform Plumbing Code as published by the International Association of Plumbing and Mechanical Officials (IAPMO) shall be and become the Plumbing Code of the City of Montclair, regulating erection, installation, alteration, repair, relocation, replacement, maintenance, or use of plumbing systems within the City. The California Plumbing Code is on file for public examination in the office of the Building Official.

10.40.020. Plumbing Code amendments.

The 2019 Edition of the California Plumbing Code is hereby adopted with no amendments.

SECTION X. Section 10.42.010 of the Montclair Municipal Code is hereby amended to read as follows:

10.42.010. Adoption.

Except as provided in this Chapter, the California Residential Code, 2019 Edition, based on the 2018 International Residential Code, including Appendix Chapters "I," "H" and "V," based on the 2018 as published by the International Code Council, as published by the California Building Standards Commission, shall be and become the Residential Building Code of the City of Montclair, regulating construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every detached one- and two-family dwelling and townhouse not more than three stories above grade in height with a separate means of egress and structures accessory thereto in the City. The California Residential Code is on file for public examination in the office of the Building Official.

SECTION XI. The following language is added to the end of Section 10.42.010 of the Montclair Municipal Code:

A. Appendix V, Swimming Pool Safety Act, AV100.2 (a), Construction permit, safety features required, is amended to read as follows:

Except as provided in Section AV100.5, when a building permit is issued for the construction of a new swimming pool or spa or the remodeling of an existing swimming pool or spa at a private single-family home, the respective swimming pool or spa shall be equipped with item #1 and at least one addition of the following seven drowning prevention features:

B. Appendix V, Swimming Pool Safety Act, AV100.2 (a) #1, Construction permit, safety features required, is amended to read as follows:

An enclosure that meets the requirements of Section AV100.3 and isolates the swimming pool or spa from the private single-family home. Any walls of the residential structure or accessory structures used to complete the isolation enclosure must have its door openings equipped with protection as required in AV100.2 (a) #4 or #5. Any such door protection device provided for this purpose may not be used to comply with the second drowning prevention feature requirement.

SECTION XII. Severability.

If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION XIII. Effective Date.

This Ordinance shall be in full force and effect thirty (30) days after passage.

SECTION XIV. Posting.

The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 2019.

Mayor

ATTEST:

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 19-988 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2019, and finally passed not less than five (5) days thereafter on the XX day of XX, 2019, by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Phillips
City Clerk



AGENDA REPORT

DATE:	DECEMBER 2, 2019	FILE I.D.:	FIN285
SECTION:	ADMIN. REPORTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	1	PREPARER:	N. CASTILLO

SUBJECT: CONSIDER APPROVAL OF THE CITY OF MONTCLAIR CAPITAL IMPROVEMENT PROGRAM FOR FISCAL YEARS 2019-20 THROUGH 2023-24

CONSIDER AUTHORIZING THE APPROPRIATION OF FUNDS AS INDICATED FOR EACH OF THE FY 2019-20 PROJECTS LISTED IN THE PROPOSED CAPITAL IMPROVEMENT PROGRAM

REASON FOR CONSIDERATION: The City Council is requested to consider approving the City of Montclair Capital Improvement Program for Fiscal Years 2019-20 through 2023-24 and funding for Fiscal Year 2019-2020. Adopting a CIP provides assurance that long-range capital project objectives will receive proper consideration and that financing will be available as authorized.

BACKGROUND: The Capital Improvement Program (CIP) is presented to the City Council on an annual basis with appropriations made for the first year of the program. The proposed Five-Year CIP covers Fiscal Years 2019-20 through 2023-24, with funding allocated for Fiscal Years 2019-20. It notes projects with previous funding, projects with additional funding for the current fiscal year, and projects for which funding is expected to be requested in future years. The CIP has been reviewed by the Public Works Committee at its meeting on November 21, 2019, with a recommendation for approval.

The proposed Five-Year CIP for Fiscal Years 2019-20 through 2023-24 is available for review in the City Clerk's Office as well as in the Public Works Department. All programmed projects identify funding sources and require appropriations each fiscal year.

FISCAL IMPACT: The Five-Year CIP for Fiscal Years 2019-20 through 2023-24 includes project cost estimates and funding sources. The City Council's approval of the CIP through 2023-2024 would have a significant impact on a variety of funds, and it is estimated that the ongoing projects, as well as the newly-funded projects, would have a combined total projected cost of over \$22 million dollars over the five-year period, with funding allocations of \$21,264,500 requested in the current fiscal year (FY 2019-2020). However, these cost estimates are dependent on economic conditions, which could change over the next five years. Furthermore, it should be noted that these estimates will become more refined as designs are completed.

Sufficient funding exists to budget for all programmed projects, and it is likely that new grant opportunities will become available in the coming years. It should also be noted that it is likely that new project needs will arise in the coming years, perhaps even displacing currently programmed projects.

The table below lists the appropriations required as part of this Five-Year CIP, along with the funds from which the appropriations would come.

Table 1.
**Summary of Fiscal Year 2019-20 Capital Improvement
 Program Project Appropriations**

<i>2019-2020 Projects</i>	<i>Appropriation</i>	<i>Funding Source</i>
<i>Central Avenue Street Rehabilitation Phase 1</i>	\$8,500,000	Bond Proceeds
<i>North Montclair Downtown Street Improvements</i>	\$8,482,000	Redev. Bond Proceeds
<i>Holt Boulevard Pavement Rehabilitation</i>	\$550,000	SBI
<i>Police Department Handrail</i>	\$150,000	Measure I Pass through
<i>Central Bridge</i>	1,440,000	HBP Grant
	360,000	TBD
<i>Monte Vista Ave Sewer Expansion</i>	\$150,000	Sewer Replacement Fund
<i>Saratoga Park Improvements</i>	\$700,000	Park Development Funds
<i>City Hall Office Remodel and Expansion Phase II</i>	\$900,000	Bond Proceeds
<i>Installation of EV Charging Station</i>	\$32,500	AQMD Grant
<i>Total Appropriations</i>	\$21,264,500	

The status of the FY 2019-2020 Capital Improvement Projects and the associated appropriations are listed the Five-Year Capital Improvement Program for Fiscal Years 2019-20 through 2023-24.

RECOMMENDATION: Staff recommends that the City Council take the following actions:

1. Approve the City of Montclair Five-Year Capital Improvement Program for Fiscal Years 2019-20 through 2023-24.
2. Authorize the appropriation of funds as indicated for each of the FY 2019-2020 projects listed in the proposed Capital Improvement Program.



AGENDA REPORT

DATE:	DECEMBER 2, 2019	FILE I.D.:	CYC265
SECTION:	ADMIN. REPORTS	DEPT.:	CITY MGR.
ITEM NO.:	2	PREPARER:	A. PHILLIPS
SUBJECT:	CONSIDER CONFIRMING THE MAYOR'S RECOMMENDATION TO REAPPOINT MAYOR PRO TEM RAFT TO A FOUR-YEAR TERM ON THE WEST VALLEY MOSQUITO AND VECTOR CONTROL DISTRICT BOARD		

REASON FOR CONSIDERATION: The West Valley Mosquito and Vector Control District (West Valley MVCD) is a special district that was formed in 1983 in response to the needs of the residents of the West Valley area for the reduction of mosquitoes plaguing the community. Currently, Mayor Pro Tem Carolyn Raft represents the City on the West Valley MVCD Board of Trustees; however, Trustee Raft's term of office is due to expire on January 4, 2016. As such, the City is required to appoint or reappoint a representative to serve on the West Valley MVCD Board of Trustees.

Pursuant to Government Code §40605, the Mayor, with the approval of the City Council, shall make all appointments to boards, commissions, and committees.

BACKGROUND: The West Valley MVCD is a special district that was formed in 1983 that is dedicated to the management of insects and animals that are of public health importance. Vector control districts have existed in California for decades and are integral to the safety, health, and well-being of residents throughout the state.

West Valley MVCD's mission is to support public health through the suppression of vector populations, reduce outbreaks of human diseases, abate public nuisances, and increase the quality of life for the residents of the West Valley. To accomplish this mission, West Valley MVCD employs integrated vector management techniques including public education and outreach, surveillance, biological control, physical control and/or habitat modification, chemical control, research, partnering with other agencies, and legal action where necessary and as governed by federal and state law.

West Valley MVCD's boundaries include the cities of Chino, Chino Hills, Montclair, Ontario, Rancho Cucamonga, and unincorporated areas of west San Bernardino County. West Valley MVCD serves over 520,000 residents in 200 square miles of the West Valley. Governing power is vested in a six-member Board of Trustees. One member each is appointed by the City Councils of Chino, Chino Hills, Montclair, Ontario, and Rancho Cucamonga with the remaining board member being appointed by the San Bernardino County Board of Supervisors. Terms of office may be served for either two or four years.

Pursuant to Government Code §40605, the Mayor, with the approval of the City Council, shall make all appointments to boards, commissions, and committees. As the current term of office for Trustee Raft ends on January 4, 2020, the Mayor is recommending reappointing Mayor Pro Tem Raft to serve a four-year term on the West Valley MVCD Board of Trustees.

FISCAL IMPACT: Confirming the Mayor's recommendation to reappoint Mayor Pro Tem Raft to the West Valley Mosquito and Vector Control District would have no direct fiscal impact on the City

RECOMMENDATION: Staff recommends the City Council confirm the Mayor's recommendation to reappoint Mayor Pro Tem Raft to a four-year term on West Valley Mosquito and Vector Control District Board.



AGENDA REPORT

DATE:	DECEMBER 3, 2019	FILE I.D.:	FIN540
SECTION:	ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	3	PREPARER:	L. LEW/V. FLORES
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of the Warrant Register and Payroll Documentation.

BACKGROUND: Mayor Pro Tem Raft has examined the Warrant Register dated December 2, 2019; and the Payroll Documentation dated November 10, 2019; and recommends their approval.

FISCAL IMPACT: The Warrant Register dated December 2, 2019, totals \$1,130,824.55; and the Payroll Documentation dated November 10, 2019, totals \$619,522.57 gross, with \$433,978.44 net being the total cash disbursement.

RECOMMENDATION: Staff recommends the City Council approve the above-referenced Warrant Register and Payroll Documentation.



AGENDA REPORT

DATE:	DECEMBER 2, 2019	FILE I.D.:	MHA030
SECTION:	ADMIN. REPORTS	DEPT.:	FINANCE/MHA
ITEM NO.:	4	PREPARER:	D. PARKER
SUBJECT:	CONSIDER APPROVAL OF THE MONTCLAIR HOUSING AUTHORITY ANNUAL REPORT PURSUANT TO SECTION 3416.1(F) OF THE HEALTH AND SAFETY CODE (SB 341) FOR FISCAL YEAR 2018-19		

REASON FOR CONSIDERATION: Senate Bill 341 became effective on January 1, 2014. The bill amended Section 34176 of the Health and Safety Code and added Section 34176.1. Health and Safety Code Section 34176 revised redevelopment law related to certain expenditure requirements of Low and Moderate Housing Funds of former redevelopment agencies. In general, Section 34176.1 limited future expenditures of administrative funds used for the monitoring and preservation of affordability covenants, directed that certain funds remaining in the Low and Moderate Income Housing Fund be directed to extremely low income households, and added certain audit and reporting requirements.

The report labeled "SB 341 Compliance Report" is attached for consideration by the City Council and Montclair Housing Authority Commission pursuant to Health and Safety Code Section 34176.1 (f). This report indicates that the financial data applicable to the Montclair Housing Authority will be included in the City of Montclair's annual independent financial audit. That process is currently being completed and that report will be provided to the City Council and Montclair Housing Authority Commission upon its receipt from the independent audit firm of Van Lant & Fankhanel, LLC. The City Council and Montclair Housing Authority Commission are requested to consider approval of the SB 341 Compliance Report.

BACKGROUND: As the City Council and Montclair Housing Authority Commissioners will recall, the California Supreme Court's decision in California Redevelopment Association, et. al. v. Matosantos upheld AB X1 26, The Dissolution Act. The Dissolution Act caused the dissolution of all California redevelopment agencies. On January 12, 2012, the City of Montclair City Council elected to become and serve as the Successor Agency to the City's dissolved redevelopment agency. The City is performing its functions as the Successor Agency to the former Redevelopment Agency under the Dissolution Act to administer the enforceable obligations of the Agency and otherwise unwind the Agency's affairs, all subject to review and approval by the County Oversight Board.

On January 12, 2012, pursuant to Section 34176 of the Dissolution Act, the City Council selected the Montclair Housing Authority to assume all housing assets and functions of the former City of Montclair Redevelopment Agency. Therefore, on February 1, 2012, the Montclair Housing Authority became the "Housing Successor" of the former Redevelopment Agency pursuant to the Dissolution Act. The actions of the Housing Successor are not subject to the review and approval of the County Oversight Board.

As indicated, certain provisions of SB 341 require that the Housing Successor prepare a Compliance Report and have an audit completed. The SB 341 Compliance Report responds to the requirements of Section 34176.1 (f) of the Health and Safety Code. The SB 341 Compliance Report also includes financial data for the Montclair Housing Corporation which operates the properties owned by the Montclair Housing Authority. Primarily, the Report indicates the following:

The Montclair Housing Authority has received approximately \$138 during Fiscal Year 2018-19 which came from interest earnings. The Montclair Housing Corporation's received \$45,558 of interest earnings and \$958,662 from rents.

The assets of the Montclair Housing Authority chiefly include real estate composed of the 98 residential units operated by the Montclair Housing Corporation and residual receipts loans.

For Fiscal Year 2018-19 the Montclair Housing Authority had no expenditures. The expenditures shown for the Montclair Housing Corporation include administrative costs by staff, management company costs which include charges for minor repairs and maintenance, major repairs and maintenance and costs for health permits. The excess of revenue for the year is accumulated so that long term maintenance items can be accomplished in the future.

The report indicates that the carrying value of the housing units owned by the Montclair Housing Authority is \$6.7 million. Approximately \$2.6 million is owed to the Montclair Housing Authority from residual receipts loans to Augusta Homes (loans for rehabilitation of mobile home parks), Neighborhood Partnership Housing Services (loans to home owners for housing rehabilitation), and National Community Renaissance (loans for acquisition and construction of new affordable housing).

The Montclair Housing Authority currently exceeds its Section 33413 inclusionary housing requirements. The income of the Montclair Housing Authority is non-reoccurring. Without a permanent source of revenue, the Montclair Housing Authority will no longer be able to provide additional affordable housing units.

Within the last 10 years, the City of Montclair Redevelopment Agency Low and Moderate Income Housing Fund provided financing for 228 deed restricted affordable rental housing units. Thirty eight percent of the units were for senior housing.

FISCAL IMPACT: Approval of the Annual Report by the City Council and Montclair Housing Authority Commission will create no fiscal impact for the City or Montclair Housing Authority. With no permanent source of the funding, the Montclair Housing Authority has extremely limited resources for the purpose of providing low and moderate housing.

As indicated, the Audit Report will be supplied to the City Council and Montclair Housing Authority Commission upon receipt from Van Lant & Frankhanel, LLC which should occur prior to December 31, 2019.

RECOMMENDATION: Staff recommends that the City Council and Montclair Housing Authority Commission approve the Annual Report prepared pursuant to Section 34176.1 (f) of the Health and Safety Code (SB 341) for Fiscal Year 2018-19.

Successor Housing Entity – Montclair Housing Authority

Health and Safety Code Section 34176.1 (f) and Section 33080.1 as well as Section 12463.3 of the Government Code shall not apply. Instead, the housing successor shall conduct, and shall provide to its governing body, an independent financial audit of the Low and Moderate Income Housing Asset Fund within six months after the end of each fiscal year, which may be included in the independent financial audit of the host jurisdiction. If the housing successor is a city or county, it shall also include in its report pursuant to Section 65400 of the Government Code and post on its Internet Web site all of the following information for the previous fiscal year. If the housing successor is not a city or county, it shall also provide to its governing body and post on its Internet Web site all of the following information for the previous fiscal year:

Response:

The Montclair Housing Authority's and Montclair Housing Corporation's financial information is part of the annual financial audit report prepared for the City of Montclair and therefore it meets the requirement by being included "in the independent financial audit of the host jurisdiction".

- (1) The amount deposited to the Low and Moderate Income Housing Asset Fund, distinguishing any amounts deposited for items listed on the Recognized Obligation Payment Schedule from other amounts deposited.

Response:

The operations of Low and Moderate Income Housing are separated and reported by two entities. The Montclair Housing Authority (Housing Authority) is the Successor Housing Entity which under the redevelopment dissolution law took over housing assets from the City of Montclair Redevelopment Agency Low and Moderate Income Housing Funds upon its dissolution. Those housing assets included single and multifamily residential housing units which are operated and maintained by the Montclair Housing Corporation (Housing Corporation) which is a separate 501(c)(3) non-profit California Corporation. The rents and other income from the housing operations belong to the Housing Authority; however, they are granted to the Housing Corporation for use in covering expenses of operating the various housing units. Below is a summary of the deposits of both of these entities for fiscal year 2018-19:

	Housing Authority	Housing Corporation	Total
Deposits for fiscal year 2018-19	\$ 138.12	\$ 1,004,219.57	\$ 1,004,357.69
Deposit detail:			
Grant from Housing Authority - Rental income	\$ -	\$ 958,661.90	\$ 958,661.90
Interest earnings	138.12	45,557.67	45,695.79
	\$ 138.12	\$ 1,004,219.57	\$ 1,004,357.69

None of the deposits above relate to any obligations listed on a Recognized Obligation Payment Schedules.

- (2) A statement of the balance in the fund as of the close of the fiscal year, distinguishing any amounts held for items listed on the Recognized Obligation Payment Schedule from other amounts.

Response:

Since this section does not define what "balance" is required, the fund balances present in the Low and Moderate Income Housing Asset Fund of the Montclair Housing Authority and the fund balance of the Montclair Housing Corporation are presented and detailed into their component amounts. Those balance and amounts are as follows as of June 30, 2019:

	Housing Authority	Housing Corporation	Total
Fund Balance	\$ 9,480,242.58	\$ 2,030,160.43	\$ 11,510,403.01
Components of Fund Balance:			
Nonspendable - Land and Real Estate	\$ 6,716,309.95	\$ -	\$ 6,716,309.95
Nonspendable - Loans Receivable	2,599,907.72	-	2,599,907.72
Restricted for Housing	164,024.91	2,030,160.43	2,194,185.34
	<u>\$ 9,480,242.58</u>	<u>\$ 2,030,160.43</u>	<u>\$ 11,510,403.01</u>

- (3) A description of expenditures from the fund by category, including, but not limited to, expenditures (A) for monitoring and preserving the long-term affordability of units subject to affordability restrictions or covenants entered into by the redevelopment agency or the housing successor and administering the activities described in paragraphs (2) and (3) of subdivision (a), (B) for homeless prevention and rapid rehousing services for the development of housing described in paragraph (2) of subdivision (a), and (C) for the development of housing pursuant to paragraph (3) of subdivision (a).

Response:

Total expenditures for fiscal year 2018-19 by category were as follows:

	Housing Authority	Housing Corporation	Total
Expenditures:			
Administrative costs	\$ -	\$ 298,269.15	\$ 298,269.15
Professional services	-	892.00	892.00
Management service company costs	-	575,126.18	575,126.18
Repairs and maintenance	-	197,927.75	197,927.75
Permits	-	896.00	896.00
Total	<u>\$ -</u>	<u>\$ 1,073,111.08</u>	<u>\$ 1,073,111.08</u>

Operations of the multifamily residential units owned by the Montclair Housing Authority (Successor Housing Entity) are done through the Montclair Housing Corporation a separate 501(c)(3) nonprofit corporation. As such, the Montclair Housing Authority has not directly incurred any expenditures for monitoring or administering affordability restrictions or covenants as these are done by the Montclair Housing Corporation as part of administering and preserving those properties. All properties owned by the Housing Authority have 55 year deed restrictions present for low and moderate income housing purposes.

- (4) As described in paragraph (1) of subdivision (a), the statutory value of real property owned by the housing successor, the value of loans and grants receivable, and the sum of these two amounts.

Response:

The statutory values of real property, loans and grants receivable at June 30, 2019 were as follows:

	Housing Authority
Real property	\$ 6,716,309.95
Loans receivable (net of allowance for uncollectible)	2,599,907.72
Total Real Property and Receivables	<u>\$ 9,316,217.67</u>

- (5) A description of any transfers made pursuant to paragraph (2) of subdivision (c) in the previous fiscal year and, if still unencumbered, in earlier fiscal years and a description of and status update on any project for which transferred funds have been or will be expended if that project has not yet been placed in service.

Response:

No transfers of monies have been done by the Montclair Housing Authority or from the Montclair Housing Corporation from the time the dissolution act was implemented (February 1, 2012) through June 30, 2019.

- (6) A description of any project for which the housing successor receives or holds property tax revenue pursuant to the Recognized Obligation Payment Schedule and the status of that project.

Response:

The Montclair Housing Authority and the Montclair Housing Corporation receive no property tax revenues. Neither of these entities has received nor currently holds any tax revenues pursuant to a Recognized Obligation Payment Schedule.

- (7) For interests in real property acquired by the former redevelopment agency prior to February 1, 2012, a status update on compliance with Section 33334.16. For interests in real property acquired on or after February 1, 2012, a status update on the project.

Response:

Section 33334.16 of the Health and Safety Code generally requires that for each interest in real property acquired by a redevelopment agency with Low to Moderate Income Housing Fund monies, a redevelopment agency must begin the development or rehabilitation of the property within five years from the date of acquisition. In the case of the former City of Montclair Redevelopment Agency, all properties acquired by the former Redevelopment Agency have been (or are in process of being) rehabilitated or sold for new housing development. The narrative below provides an update on the status of the units and/or property owned by the former City of Montclair Redevelopment Agency upon redevelopment agency dissolution in February 2012.

The former City of Montclair Redevelopment Agency was the owner of 98 units of affordable housing. The housing units were purchased and rehabilitated by the former Redevelopment Agency with Low-and Moderate-Income Housing Funds. The 98 units contain 55 year deed restrictions for affordability; approximately 80 percent of the units are deed restricted for very low income families; and over 300 people currently reside in these units.

On April 4, 2011, the Redevelopment Agency Board of Directors and the Montclair Housing Corporation Board of Directors approved the sale of 98 housing units to the Montclair Housing Corporation with the approval of Redevelopment Agency Special Counsel. The properties were sold by the Redevelopment Agency to the Montclair Housing Corporation for approximately \$12 million with the provision that all loan payments would be forgiven as long as the properties remained affordable housing subject to 55-year affordability covenants. The Montclair Housing Corporation was established in June 1994 to maintain and manage certain rental properties that the former Redevelopment Agency purchased and rehabilitated for the purpose of providing affordable housing with Low- and Moderate-Income Housing Funds to meet Health and Safety Code Inclusionary requirements. The City Council acts as the Board of Directors for the Montclair Housing Corporation.

While auditing the former City of Montclair Redevelopment Agency, the State Controller never questioned the validity of the asset transfer to the Montclair Housing Corporation. However, upon issuance of its draft Report in November 2012, the Controller's Office indicated that the housing units transferred to the Montclair Corporation should be returned to the Successor Agency. Successor Agency staff responded to the State Controller's conclusion indicating that the 98 units were existing units of affordable housing containing over 300 tenants. In addition, all the units contain 55 year affordability covenants. The State Controller's staff verbally communicated to Successor Agency staff saying that the units could be retained by the Montclair Housing Corporation upon adoption of a Resolution affirming such action by the Oversight Board. The Oversight Board approved Resolution No. 13-02 approving the transfer of the housing units to the Montclair Housing Corporation on January 23, 2013. The Final Report issued by the State Controller's Office dated

March 6, 2013 indicated the Oversight Board had authorized the property transfer and no further action was necessary.

After receipt and review of Resolution No. 13-02 by the Department of Finance (DOF) a letter was received from DOF on May 15, 2013 disallowing the transfer of the 98 housing units to the Montclair Housing Corporation. The action by DOF indicated no "Meet and Confer" on this action was authorized. The letter from DOF did remand the action back to the Oversight Board for consideration. Successor Agency staff verbally communicated with DOF where it was indicated that the housing assets in question should be placed on the Long Range Property Management Plan. It should be noted that DOF did not question the placement of these 98 housing units as assets on the Housing Asset Transfer list submitted by the Successor Agency and Oversight Board in July 2012. As directed by DOF, staff included the housing units in the first draft of the Long Range Property Management Plan.

After conference with legal counsel, Successor Agency staff submitted Resolution No. 13-10 to the Oversight Board for consideration. This resolution directed the Successor Agency to transfer the 98 units of rental housing to the Montclair Housing Authority (Successor Housing Agency) as housing assets. On September 11, 2013, the Oversight Board adopted Resolution No. 13-10 directing the Successor Agency to transfer the 98 low- and moderate-income housing units to the Montclair Housing Authority. On September 18, 2013, DOF Analyst Hanzhao Meng pulled Resolution No. 13-10 for review.

The Successor Agency to the City of Montclair Redevelopment Agency was finally allowed to delete the 98 units of low- to moderate-income housing (**Housing Assets**) in the Long- Range Property Management Plan that were held by the Montclair Housing Corporation. Per direction from DOF, pursuant to DOF Determination on OB Resolution No. 13-10 dated December 13, 2013, the transfer of the 98 units to the Montclair Housing Authority was approved.

Of the 98 units, the only unit requiring rehabilitation at the time of dissolution was the property at 5444 Palo Verde Street purchased prior to dissolution in 2011. Since its acquisition, this property has undergone extensive rehabilitation to clear trees and overgrown vegetation and to correct a variety of building code violations. The remaining items to be performed on the unit included replacement of broken windows and painting the exterior of the house. The house is currently rented to an income qualifying family.

The Montclair Housing Corporation continues rent its 98 units to income qualifying families. The majority of units are deed restricted for rental to very low income families.

The other property owned by the former Redevelopment Agency upon dissolution was located at 4113 Kingsley Street. The .47-acre property was acquired by the former Redevelopment Agency on January 20, 2009. The purchase price for the property was \$330,000. The property was acquired with Low to Moderate Income Housing Funds. At the time the property was acquired, staff held preliminary discussions with National CORE to determine its interest in considering the site for special needs housing. Development of a Special Needs Housing project was of interest to National CORE. National CORE developed similar projects in the past and has partnered with nonprofit social service providers regarding tenancy and social service needs. The proposed location for the National CORE Special Needs project lies directly east of Vista Del Cielo on the southwest corner of Kingsley Street and Pradera Avenue. This site also serves as an entry corner for the Montclair Meadows Foundation Area and the San Antonio Vista Apartments. On September 8, 2009, the Redevelopment Agency Board of Directors approved an Exclusive Right to Negotiate Agreement between the City of Montclair Redevelopment Agency and National CORE regarding the 4113 Kingsley Street site. Through the Exclusive Right to Negotiate Agreement, the Redevelopment Agency Low and Moderate Income Housing Fund provided National CORE with a predevelopment loan of approximately \$252,000. These funds were used to develop building plans for the property and to gain City entitlements. The project was entitled by the Planning Commission on March 14, 2011.

An Option Agreement regarding purchase of 4113 Kingsley Street was approved by the Redevelopment Agency Board of Directors and National CORE on October 19, 2009. The Option Agreement provided National CORE with the ability to apply for United States Department of Housing and Urban Development (HUD) Section 811 funding to finance the development of affordable housing for developmentally disabled

persons. The Option Agreement also committed that the Redevelopment Agency Board of Directors would consider providing National CORE with a residual receipts loan of at least \$1.6 million. National CORE received a commitment for funding from the Section 811 program in 2010. However, National CORE still found itself in need of additional funding for the project and sought to apply for the California 9 Percent Low-Income Housing Tax Credit (LIHTC) program. Therefore, on December 30, 2010, the Option Agreement with National CORE was extended until December 30, 2012.

National CORE was successful at receiving 9 Percent LIHTC and with the HUD Section 811 funding, National CORE was ready to finance the 18-unit Special Needs Housing Project for persons with developmental disabilities for several months. National CORE wrote a letter to the Successor Agency seeking to exercise the option for acquisition of the property. In addition, without an open escrow for the site, National CORE would be in danger of losing its commitment for HUD financing.

A public hearing to consider the Disposition and Development Agreement (DDA) with National CORE regarding the Special Needs Housing Project at 4113 Kingsley Street was set to be considered by the Redevelopment Agency Board of Directors and City Council on July 5, 2011. Unfortunately, Governor Brown signed the redevelopment dissolution legislation, AB 1X 26, on June 27, 2011. Therefore, the Redevelopment Agency Board of Directors and City Council were not able to approve the DDA with National CORE and the 4113 Kingsley Street property returned to its state as an unimproved asset of the redevelopment agency.

With the official dissolution of redevelopment agencies on February 1, 2012, the City of Montclair formed the Montclair Housing Authority to assume responsibility for former redevelopment agency housing assets. The City became the successor agency for former redevelopment agency's nonhousing assets. Successor Agency Special Counsel opined that housing assets should be transferred to the housing successor agency by matter of law so a grant deed was not recorded to commemorate the transfer.

With the adoption of AB 1484 on June 27, 2012, the housing assets of each former redevelopment agency were to be listed on a Housing Asset Transfer form and submitted to the Department of Finance (DOF) for approval. The submittal of the Housing Asset Transfer form to DOF had to be completed by August 1, 2012. The Housing Asset Transfer form for the former City of Montclair Redevelopment Agency included the property located at 4113 Kingsley Street. The Housing Asset Transfer form listed this property as a site to be used for an affordable Special Needs Housing project having a valid Option to Purchase Agreement by National CORE. In addition, the Oversight Board approved the Housing Asset Transfer form on July 25, 2012 and adopted Resolution No. 12-11 approving the transfer of housing assets to the Montclair Housing Authority.

On August 25, 2012, the DOF made the determination that the 4113 Kingsley Street property was not a housing asset. Successor Agency staff submitted a Request to "Meet and Confer" regarding this matter on September 13, 2012. The "Meet and Confer" with DOF was conducted on November 21, 2012. Representatives from National CORE and the Successor Agency staff presented the background regarding the property and discussed the lawsuit that would ensue if DOF maintained its position that 4113 Kingsley Street was not a housing asset. Finally, on December 21, 2012 DOF issued a letter reversing the determination that 4113 Kingsley Street was a nonhousing asset.

The Successor Agency Board of Directors approved the transfer of the 4113 Kingsley Street property to the Montclair Housing Authority with a grant deed on January 22, 2013. The Montclair Housing Authority also approved a Purchase and Sale Agreement to National CORE on January 22, 2013 so that National CORE's grant of HUD 811 financing could be preserved. The Montclair Housing Authority approved a Disposition and Development Agreement with National CORE on February 2, 2013, more fully detailing the terms of the purchase agreement between the Montclair Housing Authority and National CORE. The Montclair Housing Authority was not able to provide the \$1.6 million in assistance previously committed by the Redevelopment Agency. National CORE took possession of the property in early 2013. The 18-unit project was completed and occupied by spring of 2014. National CORE named the Montclair Special Needs Housing Project "San Emi." Subsequent to financing the San Emi Special Needs Housing Project, HUD discontinued the HUD 811 program. San Emi may be the last HUD project constructed with this funding source.

Adults residing in the San Emi Special Needs Housing project need to have the capacity and ability for independent living. However, these residents have the need for special services. Therefore, the Special Needs Housing project is operated slightly differently than the other National CORE Housing Projects (the San Marino Senior Apartments, the San Antonio Vista Apartment Project, or the Vista Del Cielo Apartment Project). The difference in operation is reflected in social service delivery. While all the other National CORE projects have community, recreational, or educational programs, the San Emi Special Needs Housing project has a social service provider that monitors and follows up on the needs of the resident population.

The nonprofit social service provider for the San Emi Project is United Cerebral Palsy of Los Angeles. United Cerebral Palsy of Los Angeles is experienced in operating special needs housing for the developmentally disabled. This organization currently services 11 independent living apartments and 25 community based homes to help address affordable and accessible housing in Los Angeles, Orange, and Santa Barbara counties. The Montclair Special Needs Housing project is the first project served by United Cerebral Palsy of Los Angeles in San Bernardino County.

- (8) A description of any outstanding obligations pursuant to Section 33413 that remained to transfer to the housing successor on February 1, 2012, of the housing successor's progress in meeting those obligations, and of the housing successor's plans to meet unmet obligations. In addition, the housing successor shall include in the report posted on its Internet Web site the implementation plans of the former redevelopment agency.

Response:

The only obligations which remained to be transferred to the housing successor as of February 1, 2012 pursuant to Section 33413 were those units and property detailed in Question 7 above. As stated, all units and property have been transferred and land at 4113 Kingsley Street has been developed for affordable housing. All units transferred or developed are used to satisfy Section 33413 requirements.

As of February 1, 2012 all of the Redevelopment Agency's 33413 objectives were satisfied and an excess of 56 affordable units were produced.

With the completion of the San Emi Special Needs Housing Project in 2014, the Housing Successor Entity (Housing Authority) currently has 73 units of deed restricted affordable housing in excess of current Section 33413 production requirements. At June 30, 2019, the Housing Authority had \$164,025 in cash.

Implementation Plans shall be posted on the Internet Web site.

- (9) The information required by subparagraph (B) of paragraph (3) of subdivision (a).

Response:

The Housing Authority interprets this requirement as follows:

(B) If the housing successor fails to comply with the extremely low income requirement in any five-year report, then the housing successor shall ensure that at least 50 percent of these remaining funds expended in each fiscal year following the latest fiscal year following the report are expended for the development of rental housing affordable to, and occupied by, households earning 30 percent or less of the area median income until the housing successor demonstrates compliance with the extremely low income requirement in an annual report described in subdivision (f).

Section 34176.1 of the Health and Safety Code became effective January 1, 2014. The Successor Housing Authority, at June 30, 2019, has \$164,025 in cash. This source of income is non-reoccurring. The only additional source of funding for the Montclair Housing Authority is made available through the repayment of residual receipts loans. Residual receipts loans were made to National CORE and Augusta Homes. Residual receipts income is only derived when income exceeds expenses from maintenance, operations, and payment to creditors in a first position. However, residual receipts loans do not constitute a steady income stream and in the past several years, the recipients of the residual receipts loans have been unable to make payments on the loans because operating expenses have just met or exceeded revenue.

Therefore, as indicated in Question 8 above, future project revenue to advance new affordable housing projects will not be forthcoming

To comply with requirements to provide housing for extremely low income, staff will recommend that the Housing Authority Board of Directors transfer the most of the cash balance of in the Housing Authority fund to the Housing Corporation to secure deed restrictions for extremely low income persons for one-or two-units for this income category.

The San Emi Special Needs Housing Project was completed in the 2013-14 fiscal year, 17 units of affordable deed restricted housing were created. Eight of the 17 units (47 percent) are provided to persons or families earning 30 percent or less of the area median income. Presuming the provisions of Section 34176.1 (a)(3)(A) begin on January 1, 2014, the Montclair Housing Authority complies with this Section.

- (10) The percentage of units of deed-restricted rental housing restricted to seniors and assisted individually or jointly by the housing successor, its former redevelopment agency, and its host jurisdiction within the previous 10 years in relation to the aggregate number of units of deed-restricted rental housing assisted individually or jointly by the housing successor, its former redevelopment agency, and its host jurisdiction within the same time period.

Response:

The following affordable deed restricted rental housing units have been assisted by the City of Montclair Redevelopment Agency or Montclair Housing Authority within the last 10 years:

- San Antonio Vista Family Apartments-74 units
- San Marino Senior Apartments-84 units
- Vista del Cielo Family Apartments-49 units
- Dominguez Project-2 units
- Montclair Housing Corporation-2 units
- San Emi Special Needs Apartments-17 units

The City of Montclair Redevelopment Agency or the Montclair Housing Authority assisted 228 affordable deed restricted rental housing projects in the last 10 years. Eighty four of the 228 rental units or approximately 38 percent of the units were, therefore, deed restricted for use by qualifying senior renters. The percentage of restricted senior units falls below 50 percent of the deed restricted units.

- (11) The amount of any excess surplus, the amount of time that the successor agency has had excess surplus, and the housing successor's plan for eliminating the excess surplus.

Response:

When the City of Montclair Redevelopment Agency was eliminated there was no excess surplus. Because all available amounts, since that point in time, have been distributed to the taxing entities through the Low and Moderate Housing Due Diligence Review and subsequent payment by the Successor Agency, there presently exists no carryover of excess surplus. Because the Montclair Housing Authority (Successor Housing Entity) receives no property taxes, excess surplus provisions do not apply.



AGENDA REPORT

DATE:	DECEMBER 2, 2019	FILE I.D.:	MHA030
SECTION:	ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	5	PREPARER:	C. CALDWELL
SUBJECT:	CONSIDER REVIEW AND ACCEPTANCE OF THE MONTCLAIR HOUSING AUTHORITY ANNUAL REPORT FOR FISCAL YEAR 2018-19		

REASON FOR CONSIDERATION: The Montclair Housing Authority (MHA) Commission is required to conduct an annual meeting in December to report the Authority's activities for the preceding fiscal year.

A copy of the MHA Annual Report for Fiscal Year 2018-19 is attached for the MHA Commissioners' consideration.

BACKGROUND: The MHA was created by the City Council on July 18, 2011. The City Council designated itself Commissioners of the MHA and designated certain City officials to serve as officers of the MHA. The City Manager is the Executive Director of the MHA.

The MHA financial statements for the Fiscal Year ending June 30, 2019, are included in the MHA Annual Report for Fiscal Year 2018-19. Total assets for MHA are \$9,480,242. The balance includes the value of the real property owned by the MHA and Residual Loan Receivables. A residual receipt is the repayment of monies borrowed from the former Montclair Redevelopment Agency to carry out a variety of housing programs.

FISCAL IMPACT: There would be no cost associated with the MHA Commissioners' review and acceptance of the Annual Report.

RECOMMENDATION: Staff recommends the Montclair Housing Authority Commissioners review and accept the Montclair Housing Authority Annual Report for Fiscal Year 2018-19.

**Montclair Housing Authority
Annual Report
Fiscal Year 2018-19**

Montclair Housing Authority

Javier John Dutrey, Chair

Carolyn Raft, Vice Chair

Bill Ruh, Commissioner

Tenice Johnson, Commissioner

Corysa Martinez, Commissioner

Officers

Edward C. Starr, Executive Director

Donald L. Parker, Finance Officer

Andrea M. Phillips, Housing Authority Secretary

In accordance with Section 34328 of the Health and Safety Code of the State of California, below are financial statements for the Montclair Housing Authority (Successor Housing Entity for the City of Montclair Redevelopment Agency) for the Fiscal Year Ended June 30, 2019:

Montclair Housing Authority
Balance Sheet
June 30, 2019

Assets		
Cash in Bank		\$ 164,024
Residual Receipt Loan Receivable		2,599,908
Land and Multifamily Housings Units		<u>6,716,310</u>
 Total Assets		 <u><u>\$ 9,480,242</u></u>
Fund Balance		
<u>Fund Balance</u>		
Nonspendable - Unavailable		\$ 2,599,908
Restricted for Housing		<u>6,880,334</u>
 Total Liabilities and Fund Balance		 <u><u>\$ 9,480,242</u></u>

Montclair Housing Authority
Statement of Revenues, Expenditures
and Changes in Fund Balance
For the Year Ended June 30, 2019

<u>Revenues</u>		
Interest		<u>\$ 138</u>
 Total Revenues		 <u>138</u>
 Excess of Revenues Over (Under) Expenditures		 138
<u>Fund Balances</u>		
Beginning of Fiscal Year		<u>\$ 9,480,104</u>
 End of Fiscal Year		 <u><u>\$ 9,480,242</u></u>

In addition to the hourly rates, the City shall reimburse the Attorney for all costs and expenses incurred by the Attorney, including, but not limited to, copy services, process agencies, court reporters' fees, messenger and other delivery fees, extraordinary postage, in-office photocopying, parking, investigation expenses, facsimile costs, and other similar items reasonably necessary for the proper handling of the claim and/or case or matter.

Since these services are used on an as-needed basis, the exact fiscal impact is currently unknown. Funds for attorney services are currently included in the Fiscal Year 2019-20 Budget.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 19-102 with the Law Offices of Richard S. Powell to provide legal and consulting services related to workers' compensation matters.

ATTORNEY-CLIENT PROFESSIONAL SERVICES AND FEE AGREEMENT

This Attorney-Client Professional Services and Fee Agreement ("Contract") is entered into by and between **THE CITY OF MONTCLAIR, A GOVERNMENTAL ENTITY** ("Client") located in San Bernardino County, CA and the **LAW OFFICES OF RICHARD S. POWELL** ("Attorney") of Tustin, Orange County, CA on this _____ day of November, 2019.

1. **CONDITIONS:** This Contract will not take effect, and Attorney will have no obligation to provide legal services, until Client returns a signed copy of this Contract to Attorney.

2. **SCOPE AND DUTIES:** Client hires Attorney to provide legal services as follows: Attorney makes the firm available to Client, and its third party administrator (TPA), ADMINSURE INC., as a consultant in general workers' compensation related matters that may come up from time to time. In this instance, Attorney will assist Client (1) in reviewing payroll benefits to determine which should be included in determination of calculation of LC 4850 salary continuation and/or Average Weekly Earnings (AWE) for purposes of administering the most accurate workers' compensation leave benefits, and (2) providing legal support, justification and/or explanation for those determinations should they be challenged before the Workers' Compensation Appeals Board.

Attorney shall provide those legal services reasonably required to represent Client, and shall take reasonable steps to keep client informed of the progress on any matter in which they represent Client, and will respond to Client's reasonable inquiries and those of its third party administrator. Client shall be truthful with Attorney, cooperate with Attorney, keep Attorney informed of developments in any given claim/case through a designated employer contact, and abide by this contract, pay Attorney's bills on time, and will also make a designated employer representative and/or appropriate personnel available when needed. Client will also provide Attorney with requested information and documentation in a timely manner.

3. **LEGAL FEES:** Client agrees to pay for the designated legal services at the following rates: Partner/Owner \$160.00/hr; Associates \$150.00/hr; Legal Assistants/Paralegals \$110.00/hr. Subrogation/Third Party recovery matters handled by Attorney shall be charged at the rate of \$160.00/hr for attorneys and \$110.00/hr for Legal Assistants/Paralegals. Attorneys and Legal Assistant/Paralegal time charges will be in minimum units of 0.1 hours (6 minutes). These fees shall be guaranteed for one (1) year from the effective date of this Agreement.

4. **COSTS AND EXPENSES:** In addition to paying legal fees, Client shall reimburse Attorney for all costs and expenses incurred by Attorney, including, but not limited to, copy services, process agencies, court reporters' fees, messenger and other delivery fees (USPS, FedEx, UPS), extraordinary postage, in-office photocopying at \$.25 per page, parking, investigation expenses, facsimile costs (\$1.00 for the first page, and 50 cents thereafter) and other similar items reasonably necessary for the proper handling of the claim/case or matter. Although Attorney may request additional services which in its judgment are necessary, it will be up to Client and Client's third party administrator to ultimately decide whether or not to hire needed copy services, investigators, consultants, computer services or other experts. Attorney's request for these additional services shall not be unreasonably withheld.

5. **STATEMENTS:** Attorney shall send Client periodic invoices, usually every 30 days, for fees and costs incurred. Client shall pay Attorney's invoices within 15 days after each invoice date.

Attorney-Client Agreement

Page 2 of 4

Client may request an invoice at intervals of no less than 30 days. Upon Client's request, Attorney will provide an invoice within (15) days.

6. **LIEN:** Client hereby grants Attorney a lien on any and all claims or causes of action that are the subject of Attorney's representation under this Contract. Attorney's lien will be for any sums due and owing to Attorney at the conclusion of Attorney's services. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise, if applicable.

7. **DISCHARGE AND WITHDRAWAL:** Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause. Good cause includes Client's breach of this Contract, Client's refusal to cooperate with Attorney or to follow Attorney's advice on a material matter or any other fact or circumstance that would render Attorney's continuing representation unlawful or unethical.

8. **CONCLUSION OF SERVICES:** When Attorney's services conclude on any given matter, all unpaid charges shall become immediately due and payable. After Attorney's services conclude, Attorney will, upon Client's request, deliver Client's file(s) on the particular matter(s) to Client, along with any Client funds or property in Attorney's possession.

9. **DISCLAIMER OF GUARANTEE:** Nothing in this Contract and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of any Client matter. Attorney's comments about the outcome of Client's matter are expressions of opinion only and in no event constitute either a promise or guarantee of outcome. **Additionally, client is advised that Attorney is not an accountant, nor a criminal law, insurance law, tax, bankruptcy, securities, or employment law counsel, and Client is advised to seek such advice with professionals qualified in those areas of practice or law on any issue that may affect Client's interests subject to those areas of law.**

10. **EFFECTIVE DATE:** This Contract will take effect when Client has performed the conditions stated in paragraph 1, but its effective date will be retroactive to the date Attorney first provided services. The date at the beginning of the Contract is for reference only. Even if this Contract does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

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11. **MAINTAINING CURRENT WORKERS' COMPENSATION POLICY AND PROOF OF INSURANCE:** As a necessary condition of this Contract, Client will maintain a current workers' compensation insurance policy, or valid self-insured status, providing current workers' compensation coverage as required by the State of California, and will provide a copy of the proof of current coverage on request and for any hearing for which it might be needed.

12. **ERRORS AND OMISSIONS INSURANCE COVERAGE:** As a necessary condition of this Contract, the Attorney will maintain at all times errors and omissions (E&O) insurance applicable to the services to be rendered pursuant to this Contract, at coverage rates consistent with the industry standard for attorneys providing services as described in this Contract to public entity clients. Attorney shall provide a copy of the proof of E&O insurance coverage at any time on request of the Client.

13. **Controlling Law:** The laws of the State of California shall control and govern this agreement.

DATED:

RICHARD S. POWELL
LAW OFFICES OF RICHARD S. POWELL
& ASSOCIATES
17671 Irvine Blvd. Suite 105
Tustin, CA 92780
Phone: (714)544.3007

DATED:

JOHN JAVIER DUTREY
MAYOR, CITY OF MONTCLAIR,
A GOVERNMENTAL ENTITY
5111 Benito St.
Montclair, CA 91763
Phone: (909)625-9406

possibility of conducting the redesign themselves, the WCSG determined the undertaking was not technologically feasible for their staff, and they began looking at CAD/RMS vendors to partner with for a solution that would meet the needs of the member agencies, as well as keeping any associated transition and implementation costs reasonable to existing service costs.

Mark 43 was chosen as a partner and began working to create a web-based CAD/RMS system compatible with existing WCSG member data, including the Montclair Police Department's data. Mark 43 brings additional functionality to existing systems and is capable of functioning as a paperless report writing system, mobile CAD for patrol cars, evidence management system, and media management system. Web-based systems allow for continual updates independent of the customer's systems, providing a measure of "future-proofing." There are also expanded capabilities including evidence management tools. Although the legacy system was capable of rudimentary tracking of evidence, the Department was considering third-party evidence management tools to modernize the evidence room and allow for easier audits, tracking, and production of evidence for dissemination. Third-party solutions were identified as costly, and the added functionality of the Mark 43 upgrade eliminates the need for them.

Because the upgraded system is "paperless," it will allow for many of the traditional paper report attachments to be scanned and imported, reducing the amount of physical paperwork stored. This also should reduce the amount of time Records personnel will need to spend preparing reports for distribution to the courts, as physical copies will be greatly reduced and ultimately integrated with a paperless court filing system, which is currently in development at the San Bernardino County District Attorney's Office.

Other modernization components include crime analysis and reporting; mobile device compatibility (iPads/tablets, smartphones, etc.) for portable evidence collection, notetaking, field interviewing, and photographs; full National Incident-Based Reporting System (NIBRS) compliance; redundant backups in Criminal Justice Information Services (CJIS) compliant cloud storage; and integration with all of our legacy systems and data such as Coplink.

The WCSG began their integration with Mark 43 and calculated the cost of the transition and implementation amongst the WCSG member agencies based on the agency size. Based on the Department's size, our portion of these costs (on-site training included) is \$74,000. This one-time cost covers the Department's portion for training costs, integration into existing systems, 9-1-1 integration, as well as the actual cost difference for the remaining fiscal year over what was previously paid for the legacy CAD/RMS. Thereafter, the annual cost would be \$107,454 through Fiscal Year 2023-24, with the option of extending this price through the 2026-27 Fiscal Year.

Although the proposed annual cost is \$27,973 more than the current budgeted annual cost, there is significant value added. For example, the Department had recently utilized a crime analysis program that pulled data from the legacy CAD/RMS system. It was a separate program that cost \$4,000 per year. That function will now be a standard feature. In addition to being costly up-front, the recurring costs for the proposed separate evidence management software was nearly \$10,000 per year, which would now be another integrated standard feature, eliminating this third-party need. Significant time saved preparing reports is also expected with Records personnel inputting, reviewing, and disseminating reports. Mark 43 integrates with various crash reporting systems, including Crossroads, which the Department is researching to replace paper handwritten collision reports.

In addition to the value added for these additional costs, the alternatives to separating as a member of the WCSG are grossly cost prohibitive. With the retirement and loss of support for the legacy system in 2020, the Department has no choice and must transition to an alternative product/service. Choosing to leave the WCSG would require a stand-alone system, which has a wide range of costs from \$1 million to \$2 million depending on platform, integration components, and number of personnel. This up-front cost does not include any annual maintenance or updates, which is usually a separate recurring cost.

In contrast, maintaining the Department's relationship with WCSG and implementing the upgrade spreads many of these costs amongst all the member agencies, and allows for the Department to continue to get WCSG service, support, and local contact with a similar pricing structure. In addition, all of the Department's legacy data will be preserved, maintained, and accessible in a native software environment. The Department's existing hardware is mostly sufficient for the upgrade. Three LINUX interface and print servers are needed to complete the upgrade at a cost of \$3,087.53 through the Information Technology preferred vendor, CDW-G.

FISCAL IMPACT: If authorized by the City Council, funding for Agreement No. 19-103 and the necessary computer hardware from CDW-G for upgrades to the Department's CAD/RMS would result in a one-time expenditure of \$77,087.53 from Federal Asset Forfeiture Fund 1144. This one-time expenditure would have no additional fiscal impact to the City's General Reserve Fund for the 2019-20 Fiscal Year.

Beginning in Fiscal Year 2020-21 through FY 2023-24, there would be an annual financial impact to the City's General Fund of \$107,454 for CAD/RMS services. This total reflects an increase of \$27,973 from the previous budget year.

RECOMMENDATION: Staff recommends the City Council take the following actions:

1. Approve Agreement No. 19-103 with WCSG and Mark 43 for computer-aided dispatch and records management software upgrades and services.
2. Authorize a \$77,087.53 appropriation from the Federal Asset Forfeiture Fund for costs related to Agreement No. 19-103 and for the purchase of associated server hardware.

Member Agency Admission Agreement

This Member Agency Admission Agreement (the “Admission Agreement”) between Mark43, Inc. (“Mark43”), the City of West Covina (“West Covina”), and the agency listed in the signature below (the “Member Agency”) is effective as of December 3, 2019. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Software License and Services Agreement between Mark43, Inc. and the City of West Covina dated as of April 18, 2019 (**Attachment A**, the “Mark43-West Covina Agreement”). Mark43, West Covina, and the Member Agency shall constitute the “Parties”.

RECITALS

- A. WHEREAS, the Member Agency wishes to use the Services purchased by West Covina under the Mark43-West Covina Agreement;
- B. WHEREAS, the Member Agency may wish to purchase additional related Services from Mark43;
- C. WHEREAS, West Covina and the Member Agency may enter into a separate agreement to govern their respective rights and obligations, solely as between them, regarding use of the Services; and
- D. WHEREAS, Mark43 requires the Member to agree to this Admission Agreement to become admitted as a Member Agency under the Mark43-West Covina Agreement.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

- 1. The Member Agency will be admitted as a Member Agency under the Mark43-West Covina Agreement.
- 2. The Member Agency agrees to be bound by all obligations of Subscriber under the Mark43-West Covina Agreement as if it were the Subscriber.
- 3. Mark43 reserves the right to enforce violations of the Member Agency against the Member Agency.
- 4. West Covina shall notify Mark43 if it knows of any Member Agency who is acting in violation of the terms of the Mark43-West Covina Agreement.
- 5. Any new Services offered to Member Agency, or changes to the Services shall be identified on Exhibit A to this Admission Agreement. Such Services shall be included within the definition of Services under the Mark43-West Covina Agreement, provided that Mark43 shall have no obligation to offer such new or additional Services to Subscriber or any other Member Agency.
- 6. In consideration for Member Agency’s use of the Services and Mark43’s performance, Member Agency shall pay the fees to West Covina as agreed upon separately between Member Agency and West Covina based on the Services purchased and the Member Agency’s number of sworn officers, each set forth below and attached herto as Exhibit C.

- a. Services: CAD (including Dispatcher and First Responder), RMS (including Property & Evidence), Business Intelligence Suite (5 dashboard builder licenses); Data Exchange will be provided by West Covina.
- b. Number of sworn officers: 50

West Covina shall invoice the Member Agency for the amounts owed and shall forward the portion of such fees due to Mark43 upon receipt of payment from the Member Agency. Any funds received by West Covina from the Member Agency relating to the Services (as provided by Mark43) shall be held in trust for the benefit of Mark43 until Mark43 has been paid.

- 7. The implementation timeline for Services provided to Member Agency is as set forth in separate writing (such as a statement of work) agreed by the Parties, attached hereto as Exhibit B.
- 8. Unless otherwise specified herein, all notices and other communications between the parties required or permitted by this Admission Agreement or by Applicable Law, will be deemed properly given, if given by (i) personal service, (ii) registered or certified mail, postage prepaid, return receipt requested, or (iii) nationally recognized private courier service, to the respective addresses of the parties set forth below or such other addresses as the respective parties may designate by like notice from time to time. Notices so given will be effective upon (a) receipt by the party to which notice is given; or (b) on the fifth (5th) business day following mailing, whichever occurs first:

If to Mark43:

Mark43, Inc.
 28 E. 28th Street
 12th Floor
 New York, NY 10016
 Attn: David Jochim
 Email: dave@mark43.com

Copy to:

Mark43, Inc.
 28 E. 28th Street
 12th Floor
 New York, NY 10016
 Attn: General Counsel
 Email: contractnotices@mark43.com

If to West Covina:

City of West Covina
 1444 West Garvey Ave.
 West Covina, CA 92790
 Attn: Police Lt. Ken Plunkett
 Email: ken.plunkett@wcpd.org

Copy to:

Jones & Mayer
 3777 N. Harbor Blvd.
 Fullerton, CA 92835
 Attn: West Covina City Attorney
 Email: sep@jones-mayer.com

If to Member Agency:

Montclair Police Department
 4870 Arrow Highway
 Montclair, CA 91763
 Attn: Lieutenant Brandon Kumanski
 Email: BKumanski@cityofmontclair.org

- 9. This Admission Agreement may be executed, including by electronic signature, in two or more counterparts, each of which shall be an original and all such counterparts together shall constitute one and the same instrument. Electronically executed or electronically transmitted (including via facsimile transmission) signatures have the full force and effect of original signatures.
- 10. West Covina is not a subcontractor of Mark43, and Mark43 will not be liable for acts or omissions of West Covina in connection with West Covina’s performance of services to Member Agency.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

MARK43, INC.

CITY OF WEST COVINA

By: _____
 Title: _____
 Date: _____

By: _____
 Title: _____
 Date: _____

MEMBER AGENCY:

City of Montclair

By: _____
 Title: Javier John Dutrey, Mayor
 Date: _____

Attest:

By: _____
 Title: Andrea Phillips, City Clerk

EXHIBIT A

ADDITIONAL SERVICES

None.

EXHIBIT B

IMPLEMENTATION TIMELINE

The below proposed implementation timeline is only valid should this Admission Agreement be executed by the end of the fourth quarter of 2019. The below timing with respect to the period from contract to go-live date is predicated on resource availability from the Member Agency and West Covina and can be adjusted to satisfy staffing requirements.

Task Name	Duration	Start	Finish
Project Schedule Planning	195 days	Tue 12/3/19	Mon 8/31/20
Phase One - Analysis and Assessment	7.5 days	Tue 12/3/19	Thu 12/19/19
Contract Signed	0 days	Tue 12/3/19	Tue 12/3/19
Project Schedule Planning Meetings	0.5 days	Wed 12/4/19	Wed 12/4/19
Business Process Review	1 day	Wed 12/4/19	Thu 12/5/19
Analysis of Workflows	2 days	Thu 12/5/19	Mon 12/9/19
Complete Foundation Questionnaires	2 days	Mon 12/9/19	Wed 12/11/19
Review Process, Protols and Hurdles	1 day	Wed 12/11/19	Thu 12/12/19
Phase Two - Planning	5.75 days	Mon 1/6/20	Tue 1/14/20
Project Plan Review and discussion	0.25 days	Mon 1/6/20	Mon 1/6/20
Experts, Hardware and Training	0.25 days	Mon 1/6/20	Mon 1/6/20
Finalized Planning Meeting	0.25 days	Mon 1/6/20	Mon 1/6/20
Order hardware required on-site	0.25 days	Tue 1/6/20	Tue 1/6/20
Send Notifications Hardware Received	5 days	Tue 1/7/20	Tue 1/14/20
Installation of Equipment Hardware	6.25 days	Tue 1/14/20	Wed 1/29/20
Physical or Virtual Installation and Configuration Complete	2.5 days	Wed 1/29/20	Fri 1/31/20
Phase Three - Execution	187.5 days	Thu 2/6/20	Mon 10/26/20
Phase Four - Switch Over - GO LIVE	3 days	Tue 10/27/20	Thu 10/29/20
Live System CAD	1 day	Tue 10/27/20	Tue 10/27/20
Live System RMS	1 day	Tue 10/27/20	Tue 10/27/20
Live System Mobile	1 day	Tue 10/27/20	Tue 10/27/20
Day-1 CAD (Post Live Review)	1 day	Wed 10/28/20	Wed 10/28/20
Day-1 RMS (Post Live Review)	1 day	Wed 10/28/20	Wed 10/28/20
Day-1 Mobile (Post Live Review)	1 day	Wed 10/28/20	Wed 10/28/20
Day-2 CAD (Post Live Review)	1 day	Thu 10/29/20	Thu 10/29/20
Day-2 RMS (Post Live Review)	1 day	Thu 10/29/20	Thu 10/29/20
Day-2 Mobile (Post Live Review)	1 day	Thu 10/29/20	Thu 10/29/20
Phase Five - Completion and Sign-Off	3.5 days	Mon 11/2/20	Thu 11/5/20



EXHIBIT C

Itemized list of product and services:

Itemized below are any additional professional services, products, and associated annual maintenance required to complete the SaaS subscription commitment to Mark43. Interfaces identified for Montclair PD include; Vesta (911 transfer), CLETS direct (CLETS inquiries via Mark43 SaaS). Additional interfaces, not identified in the list, can be developed and implemented at the written request of Montclair PD. If an additional interface is already in production and needs minor modification for a Montclair use-case, a small configuration and set-up fee will be added to the proposal. If an interface does not exist and is to be developed from scratch, West Covina and Mark43 engineering will provide a Scope of Work and pricing for a new interface to Montclair PD for approval.

All CLETS Administrative Messaging accomplished using the existing West Covina RMS tool (or software provided by the County). The West Covina RMS Administrative CLETS functionality will be upgraded to a new web-service replacing the existing graphical user interface during 2019.

Type	SKU	One-Time Price to MPD	Annual Recurring Price to MPD
Subscription/License	Computer Aided Dispatch (CAD)	\$0.00	\$49,200.00
Subscription/License	CAD Fire First Responder	\$0.00	\$0.00
Subscription/License	Records Management System (RMS)	\$0.00	\$49,200.00
Subscription/License	GPS AVL	\$5,000.00	\$0.00
Subscription/License	Hosting	\$0.00	\$0.00
Subscription/License	Property & Evidence	\$0.00	\$0.00
Subscription/License	UCR & NIBRS	\$0.00	\$0.00
Subscription/License	Case Management	\$0.00	\$0.00
Subscription/License	Message Switch - Inquiry	\$3,500.00	\$2,310.00
Subscription/License	Message Switch - Admin	\$5,500.00	\$5,544.00
Subscription/License	Dashboard tool for data analysis (M43 BI for 5 users)	\$0.00	\$1,200.00
Services	ANI/ALI (Intrado e-911)	\$10,000.00	\$0.00
Services	Data Conversion	\$0.00	\$0.00
Services	WCSG Project Management and Implementation Fee	\$12,000.00	\$0.00
Services	WCSG Tables & Config	\$0.00	\$0.00
Services	WCSG Training & Support	\$6,000.00	\$0.00
Services	Mark43 Product Support (24/7 live support)	\$0.00	\$0.00
Services	Mark43 Project Management	\$32,000.00	\$0.00
	Total	\$74,000.00	\$107,454.00

The total One-Time Price to MPD of \$74,000 and the Annual Recurring Price to MPD of \$107,454 includes the Mark43 SaaS, additional professional services, interfaces, and related products. This pricing model is based on a count of 50 Sworn Police.



Summary Invoicing for Member Agency: City of Montclair

FY 2019-2020

Annual Commitment to West Covina for CAD/RMS/Mobile (2019-2020)	July 2019	\$79,481
Signature of Member Agency Agreement West Covina and Mark43	4 th Qtr 2019	
Estimated Implementation/conversion - Signature to "Go-Live" (estimated Go-Live by July 2020)		
Full First-Year implementation, training, and installation including existing system		\$74,000

FY 2020-2021

First Year Subscription Member Agency with Mark43	July 2020	\$107,454
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FY 2021-2022

On-going Subscription Member Agency with Mark43	July 2021	\$107,454
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FY 2022-2023

On-going Subscription Member Agency with Mark43	July 2022	\$107,454
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FY 2023-2024

On-going Subscription Member Agency with Mark43	July 2023	\$107,454
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ATTACHMENT A

SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement (this “**Agreement**”) is effective as of April 18, 2019 (the “**Effective Date**”) by and between Mark43, Inc. (“**Mark43**”), with a place of business at 28 E. 28th 12th Floor, New York, NY 10016, and the City of West Covina (“**Subscriber**”), with a place of business at 1444 West Garvey Avenue South West Covina, CA 91790.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

- 1.1 **Defined Terms.** Defined terms have the meanings set forth in this Article 1 (Definitions) and elsewhere in this Agreement when capitalized, and may be read in singular, plural or an alternative tense as the context requires.
- 1.2 “**Affiliate**” means, with respect to any entity, any other entity who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
- 1.3 “**Applicable Law**” means, with respect to any party, any federal, state or local statute, law, ordinance, rule, administrative interpretation, regulation, order, writ, injunction, directive, judgment, decree or other requirement of any international, federal, state or local court, administrative agency or commission or other governmental or regulatory authority or instrumentality, domestic or foreign, applicable to such party or any of its properties, assets or business operations.
- 1.4 “**Applications**” means the Records Management System and other applications as described in Schedule A.
- 1.5 “**Authorized User**” means an Affiliate, employee or independent contractor of Subscriber or Member Agency (solely to the extent such contractor is providing services to Subscriber or Member Agency), who has been authorized by Subscriber or Member Agency to use the SaaS Services.
- 1.6 “**Documentation**” means the user guides and user manuals for the SaaS Services.
- 1.7 “**Go Live**” means the date of cutover to each respective Mark43 Application.
- 1.8 “**Integration Control Document**” means the agreement, if applicable, governing any integrations with Third Party Applications.
- 1.9 “**Intellectual Property Rights**” means all intellectual and industrial property rights, whether now existing or existing in the future, including without limitation, (i) all patent rights, including any rights in pending patent applications and any related rights; (ii) all copyrights and other related rights throughout the world in works of authorship, including all registrations and applications therefor; (iii) all trademarks, service marks, trade dress or other proprietary trade designations, including all registrations and applications therefor (iv) all rights throughout the world to proprietary know-how, trade secrets and other confidential information, whether arising by law or pursuant to any contractual obligation of non-disclosure; and (v) all other rights covering industrial or intellectual property recognized in any jurisdiction.
- 1.10 “**Member Agency**” is an agency that is party to an Admission Agreement in the form attached as Exhibit 1, which such agreement must be signed by Subscriber, Mark43, and the Member Agency.
- 1.11 “**Professional Services**” means the evaluation, consultation, implementation, customization, configuration and other services offered by Mark43 in connection with the SaaS Services.
- 1.12 “**Regular Usage Period**” for any Application commences upon the occurrence of Go Live for that Application.
- 1.13 “**SaaS Services**” means the Applications, Software, and related software-as-a-service, hosting, maintenance and/or support services made available by Mark43 for remote access and use by Subscriber, including any Documentation thereto.
- 1.14 “**Services**” means the services provided or required to be provided by or through Mark43, including without limitation, SaaS Services and Professional Services.

- 1.15 **“Software”** means the object code version of Mark43’s computer software and all Updates made available by Mark43 to Subscriber under this Agreement.
- 1.16 **“Statement of Work”** means a detailed plan of work to be agreed by the Parties in conjunction with this Agreement.
- 1.17 **“Subscriber”** means the City of West Covina. As set forth in Section 10, and except where indicated as the “City of West Covina,” Subscriber also includes the Member Agencies which enter into an Admission Agreement.
- 1.18 **“Subscriber Data”** means all data, information, content and other materials stored or transmitted by Subscriber, Member Agency, or any Authorized User through the SaaS Services (i) in their user accounts; and (ii) on any Third Party Application, excluding any Third Party Data and any Mark43 Data.
- 1.19 **“Term”** means the Initial Term and any Renewal Term.
- 1.20 **“Third Party Application”** means a third-party service **approved by Mark43** to which Subscriber and any Authorized User facilitates Mark43’s access to, and use, of the SaaS Services, via an application programming interface or other means.
- 1.21 **“Third Party Components”** means any components of the SaaS Service from time to time that are provided by third parties (e.g., Google Maps).
- 1.22 **“Third Party Data”** means any data owned by a third party that is delivered to Subscriber via the SaaS Service.
- 1.23 **“Third Party Provider”** means third parties, including other vendors, state agencies and local agencies, that control products and/or databases with which Mark43 SaaS Services are to be interfaced.
- 1.24 **“Updates”** means any and all new releases, new versions, patches and other updates for the SaaS Services that Mark43 makes generally available without additional charge to its other subscribers of the SaaS Services.
- 1.25 **“Vendors”** means third parties with whom Mark43 contracts to provide components of the SaaS Services, and includes without limitation, Amazon Web Services (for platform hosting) and Google (for Google Maps).
- 1.26 **“Website”** means any Internet website through which Mark43 provides the SaaS Services under this Agreement.

2. SERVICES.

- 2.1 **SaaS Services.** Subject to the terms of this Agreement, and during the Term, Mark43 hereby grants a non-exclusive, non-transferable, non-sublicensable license to Subscriber and its Authorized Users to access and use the SaaS Services through the Website for Subscriber’s internal purposes and in accordance with the terms and conditions of this Agreement. Mark43 will be responsible for hosting the Website, and Subscriber and its Authorized Users will be responsible for obtaining internet connections and other third party software, hardware and services necessary for it to access the Website through the Internet, including without limitation as set forth in **Schedule C, “Technical Requirements.”** Subscriber will be responsible to Mark43 for compliance with the restrictions on use and other terms and conditions of this Agreement by any of its Authorized Users.
- 2.2 **Professional Services.** Mark43 will provide the Professional Services in connection with the SaaS Services as further described in **Schedule A.** To the extent any Professional Services involve the development of any customization or configuration to the SaaS Services, all Intellectual Property Rights to such customization or configuration will be solely owned by Mark43 and will be deemed to be included in the definition of SaaS Services and licensed to Subscriber on the terms set forth herein.
- 2.3 **Access to Documentation.** Mark43 will provide Subscriber, via the Website or other means, with access to the Documentation, which Documentation may be updated from time to time. Subscriber may print copies of, use, and permit its Authorized Users to use, the Documentation solely in connection with the use of the SaaS Services.
- 2.4 **Support Services.** Mark43 will provide a telephone-based help desk through which it will respond to inquiries about the SaaS Services from Subscriber via telephone from 7 AM to 7 PM (Eastern

Time), Mondays through Fridays (excluding U.S. Federal holidays). Mark43 will also provide a 24/7 email-based help desk for the SaaS Services as set forth in Schedule A.

- 2.5 Restrictions on Use.** Subscriber, Member Agency and each of their Authorized Users will not (and will not permit any third party to): (i) share Subscriber's or any Authorized User's login credentials; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of the SaaS Services or of any files contained in or generated by the SaaS Services; (iii) copy, modify, adapt or translate the SaaS Services or the Third Party Data, or otherwise make any use, resell, distribute or sublicense the SaaS Services or the Third Party Data other than in connection with this Agreement; (iv) except with respect to Member Agencies, make the SaaS Services available on a "service bureau" basis (i.e. time sharing, subleasing, sublicensing or rental) or allow any third parties to use the SaaS Services; (v) disclose the SaaS Services or any of its components to third parties; (vi) remove or modify any proprietary marking or restrictive legends placed on the SaaS Services or the Third Party Data; (vii) use the SaaS Services or the Third Party Data in violation of any Applicable Law; (viii) create or augment any mapping-related dataset including a mapping or navigation dataset, business listings database, mailing list, or telemarketing list) for use in an implementation that is not connected to the Services; (ix) intentionally introduce into the Services any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature; (x) use the Services to post advertising or listings; (xi) use the Services to defame, abuse, harass, stalk, or threaten others; (xii) permit access or use of the Services by any individual outside the United States; (xiii) hide or obscure any Authorized User's location; (xiv) permit access or use of the Services, for any activities other than to enhance Subscriber's own services. Subscriber and its Authorized Users will not access the SaaS Services if in direct competition with Mark 43, and will not allow access to the SaaS Services by any party who is in direct competition with Mark43, except with Mark43's prior written consent. Subject to the foregoing, Mark43 consents to the Subscriber developing and maintaining a competing law enforcement records management product and computer-aided dispatch product (the "Legacy System") with expected end of life on December 31, 2021 on the basis that Subscriber is not going to utilize Mark43 Intellectual Property to develop or market the Legacy System. Any action that would otherwise constitute a violation of subsections (i), (ii) or (iii) of this Section 2.5 shall not be a violation thereof if the actual purpose of such action is to develop interfaces to Mark43's Applications for the City of West Covina's own use or the use of the Member Agencies. Any such action may only be taken when necessary for such development and Subscriber shall take any and all steps possible to limit the scope of any such violation.
- 2.6 Security Obligations.** Subscriber agrees it, its Member Agencies, and Authorized Users shall securely manage their respective password(s) for access to the SaaS Service. Subscriber agrees it shall notify Mark43 promptly in the event it becomes aware of any unauthorized access or use of the SaaS Service, or of any of its or its Authorized Users passwords or accounts. Unless expressly stated otherwise in this Agreement, a single username or password may not be used by more than one (1) Authorized User. In addition, each Authorized User may log into the SaaS Service from only one location at any given time – concurrent usage (or sign in) under a single username is prohibited. Subscriber is responsible for all activities conducted within User accounts in use of the SaaS Service. Subscriber shall comply with all applicable local, state, federal and regional or other laws and regulations applicable in connection with use of the SaaS Service, including all those related to data privacy and the transmission of technical or personal data. Subscriber agrees to (a) provide true, accurate, current and complete registration data for each account it creates via the SaaS Service, and (b) maintain and promptly update the registration data to keep it true, accurate, current and complete.
- 2.7 Title.** As between Mark43 and Subscriber, Mark43 retains title to and ownership of the SaaS Services, including all copyrights and other Intellectual Property Rights relating thereto. Mark43's licensors retain title to and ownership of the Third Party Data and the Third Party Components, including all copyrights and other intellectual property rights relating thereto. Subscriber will have no rights with respect to the SaaS Services, the Third Party Data or the Third Party Components other than those expressly granted under this Agreement. Any suggestions for changes or improvements to Services that Subscriber provides to Mark43, whether solicited by Mark43 or not, shall be owned by Mark43 and Subscriber hereby irrevocably assigns, and shall assign, to Mark43 all right, title, and interest in and to such suggestions. Mark43 shall have no obligation to incorporate such suggestion into its products or Services. For the avoidance of doubt, the parties acknowledge that the City of West Covina shall retain ownership of any rights contained in the interfaces it independently develops for its own use and/or for use by Member Agencies and the City of West Covina agrees to negotiate in good faith to allow Mark43 to purchase licenses for use of any such interfaces on terms to be

mutually agreed upon by the parties, provided that no purchase will be necessary with respect to the Member Agencies, who shall be granted such licenses directly from the City of West Covina.

2.8 Subscriber Data. As between Mark43 and Subscriber, Subscriber and the Member Agencies own and shall retain all right, title, and interest, including, without limitation, all Intellectual Property Rights, in and to the Subscriber Data. Subscriber shall have the sole responsibility for the accuracy, quality, and legality of the Subscriber Data, including obtaining all rights and consents necessary to share the Subscriber Data with Mark43 as set forth in this Agreement. Notwithstanding anything to the contrary contained herein, Subscriber hereby grants to Mark43 an irrevocable, worldwide, royalty free, non-exclusive, transferable, sublicensable license to use the Subscriber Data to: provide the SaaS Services to Subscriber and other Mark43 subscribers; analyze the Subscriber Data in anonymized and/or aggregate form in order to operate, maintain, manage, and improve the SaaS Services, create new products and services, and share and/or license this anonymized and/or aggregate data to Affiliates, agents, business partners, and other third parties; for Mark43's internal purposes to improve the Applications, Software, and related services, and any other uses disclosed in or related to performance under the Agreement or any statement of work. Notwithstanding the foregoing, Mark43 may not sell or offer for sale any Subscriber Data, whether in Subscriber identifiable, or anonymized and aggregated form. Mark43 shall comply with its obligations under all Laws applicable to Mark43's provision of the Service, including all such Laws related to privacy, data security, and data protection.

2.9 Third Party Applications. If Subscriber installs or enables a Third Party Application for use with the SaaS Services, Subscriber grants (and will cause the applicable third party to grant) Mark43 permission to access Subscriber Data stored on that Third Party Application as required for the interoperation of that Third Party Application with the SaaS Services. In no event will Mark43 be responsible for any Third Party Application, or for any failure of a Third Party Application to properly interoperate with the SaaS Services. If Mark43 receives information that a Third Party Application may violate any Applicable Laws or Third Party rights, Subscriber will, promptly upon receiving notice of the foregoing from Mark43, disable any connection between such Third Party Application and the SaaS Services to resolve the potential violation (and if Subscriber fails to promptly disable such connection, Mark43 shall have the right to do so). In addition, in the event that Subscriber fails to properly obtain the grant of rights to Mark43 to access and use Third-Party Data as required for the interoperation of that Third-Party Application, Subscriber shall defend, indemnify, and hold harmless Mark43 from any and all claims based on Mark43's use of such Third-Party Application.

2.10 Third Party Components.

- (a) **Use of Third-Party Components.** Mark43 may use Vendors to provide certain functions of the Services, including without limitation, hosting and data analysis, but notwithstanding any other provision of this agreement to the contrary, Mark43 shall ensure that the Vendors provide the Services to the level required of Mark43 by this Agreement at no additional cost to Subscriber. Subscriber acknowledges that each Vendor may have its own policies and terms and conditions of service to ensure the Subscriber does not steal Vendor's intellectual property, among other things. Such terms, or URL locator addresses for such terms, will be provided on **Schedule D** or in writing from time to time, "**Additional Terms.**" If any of the Vendors and/or licensors of the Third-Party Components require Mark43 to flow down any Additional Terms to Subscriber, Subscriber's use of such Third-Party Components, as incorporated into the SaaS Service, shall be subject to such Additional Terms. Subscriber shall have the right to opt out of any such Third-Party Components by affirmatively declining any such Additional Terms. Mark43 warrants that the Services contemplated under this agreement will continue to operate even if Subscriber opts not to accept those Additional Terms, although Subscriber understands that failure to accept the Additional Terms may cause Subscriber to not be able to obtain the benefits of those Third-Party Components. Notwithstanding the foregoing, Subscriber agrees to accept the Additional Terms if they are for the use of Google Maps or Amazon Web Services. In the event of any inconsistency or conflict between the Additional Terms and the terms of this Agreement, such Additional Terms shall govern with respect to Subscriber's use of the applicable Third Party Component.
- (b) **DISCLAIMER REGARDING THIRD PARTY COMPONENTS.** MARK43, NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD PARTY COMPONENTS, NOR THE PROVIDERS' OR MANUFACTURERS' AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD PARTY COMPONENTS AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST. Notwithstanding the foregoing, Mark43 shall make reasonable efforts to ensure ongoing

interoperability and conformity with the SaaS services, and shall provide reasonable assistance to Subscriber in any Subscriber led efforts to ensure ongoing interoperability.

- 2.11 Third Party Data.** Subscriber shall access and use the Third Party Data in accordance with the terms and conditions of the agreement between the Subscriber and the provider of such Third Party Data. MARK43, NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD PARTY DATA, NOR THE PROVIDERS' OR MANUFACTURERS' AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD PARTY DATA AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.
- 2.12 Agreements with Third Party Providers.** Subscriber, and not Mark43, is solely responsible for establishing any required agreement(s) and/or statement(s) of work with Third Party Providers in connection with the interfaces, and for paying all fees, costs and expenses of Third Party Providers.
- 2.13 Changes to Services.** Mark43 may make changes and Updates to its Services, provided that it does not materially derogate the overall quality of the Services. Mark43 does not guarantee that the Services are or will remain compatible with any particular third party software or equipment, and may, upon no less than 60 days written notice, terminate its support for, any software or equipment of Subscriber that Mark43 determines are incompatible with the operation of the Services.

3. FEES AND PAYMENT TERMS.

- 3.1 Fees for Mark43 Services.** Subscriber will pay Mark43 fees as stated on Schedule A (the "Fees") attached hereto in accordance with the payment schedule set forth on Schedule A. All payments of Fees are non-refundable. All amounts stated in this Agreement or on any invoice are in U.S. dollars, and all payments will be made in U.S. dollars. Unless prohibited by local law, overdue payments will accrue interest at the lesser of one and one-half percent (1.5%) per month or the maximum allowable interest under Applicable Law, from due date until paid. Subscriber will pay any sales, use or other tax related to the license and services provided hereunder, exclusive of income taxes and payroll taxes relating to Mark43's employees. Subscriber agrees that its use of and payment for Services constitutes its inspection and acceptance of such Service.
- 3.2 Third-Party Data and Third-Party Components.** Additional fees may apply to the use of certain Third-Party Data and Third-Party Components, which if provided by Mark43, such fee may be included within the Fees. Mark43 may pass through any increase in such fees for Third Party Components or Third Party Data, relating to any existing Services, by giving Subscriber thirty (30) days' advance notice.
- 3.3 Taxes.** Subscriber will pay all taxes, including sales, use, excise, and other governmental fees, duties, and charges (and any penalties, interest, and other additions thereto) that are imposed on Subscriber with respect to the transactions and payments under this Agreement.
- 3.4 Point of Sale.** The point of sale for all financial transactions contemplated in this Agreement shall be the City of West Covina, California.

4. TERM AND TERMINATION.

- 4.1 Term.**
- (a) Initial Term. The initial term of this Agreement begins on the Effective Date and will continue for the period set forth on Schedule A, unless and until terminated in accordance with Section 4.2 (the "Initial Term").
- (b) Renewal Terms. Upon expiration of the Initial Term or any Renewal Term, this Agreement will automatically renew for successive periods as set forth on Schedule A (each, a "Renewal Term") at the rates set forth on Schedule A, unless either party provides the other with written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term.
- 4.2 Temporary Suspension and Termination.**
- (a) Either party may terminate this Agreement upon written notice to the other party, if the other party breaches a material term of this Agreement and such breach remains uncured for thirty (30) days after the other party's receipt of such notice.
- (b) If Mark43 reasonably determines that Subscriber's use of the Services either: (i) fails to comply with the Restrictions on Use in Section 2.5; (ii) poses a security risk to the Services or any third party, (iii) creates or is likely to create an adverse impact on Mark43's systems, the Services, or the systems or content of any other subscriber; or (iv) subjects Mark43 or its Affiliates to possible

liability, then Mark43 may immediately upon notice temporarily suspend Subscriber's and any Authorized User's right to access any portion or all of the Services, pending remedial action by Subscriber, or after a period of 30 days, terminate the Services. Notwithstanding the foregoing, Mark43 recognizes that Subscriber uses the Services for public safety, and that loss of the use of the Services on even a temporary basis can have a substantial negative impact on Subscriber and on public safety, and as such, Mark43 shall use the rights conferred within this section only to the limited extent and scope necessary, and only in a situation where all other reasonable courses of action to protect Mark43's interests have been exhausted.

- (c) If Subscriber reasonably determines that the Services (i) are being provided in a manner inconsistent with the requirements of this Agreement; (ii) poses a security risk to the Services or any third party, (iii) creates or is likely to create an adverse impact on Subscriber's systems; or (iv) subjects Subscriber to possible liability, then Subscriber may immediately upon notice temporarily suspend use of the Services pending remedial action by Mark43, or after a period of 30 days, terminate the Services. If Subscriber stops utilizing the Services in this manner, then Subscriber shall receive a pro-rata credit against any amounts paid or otherwise owed by Subscriber for the use of such Services during such period of suspension or termination. Notwithstanding the foregoing, Subscriber recognizes that temporary non-use of the Services can have a substantial negative impact on Mark43, and as such, Subscriber shall use the rights conferred within this section only to the extent necessary to protect City's interests.

4.3 Effect of Termination. In the event of any termination or expiration of this Agreement,

- (a) Subscriber will pay Mark43 all amounts due or payable hereunder as of the termination or expiration date;
- (b) All rights and licenses granted hereunder to Subscriber (as well as all rights granted to any Authorized Users of Subscriber) will immediately cease, including but not limited to all use of the SaaS Services; and
- (c) Mark43 will provide records to Subscriber in accordance with its transition assistance services ("**Transition Assistance**") as set forth in Schedule B.
- (d) Subscriber will, upon written request of Mark43, either return to Mark43 or provide Mark43 with written certification of the destruction of, all documents, computer files and other materials containing any Confidential Information of Mark43 that are in Subscriber's possession or control.

4.4 Survival. The following provisions will survive any termination or expiration of this Agreement: Section 2.7 ("Subscriber Data"), Section 2.9 ("Third Party Components"), Section 2.10 ("Third Party Data"), Section 4.3 ("Effect of Termination"), Section 5 ("Confidentiality"), Section 6.2 ("Disclaimer"), Section 7 ("Limitation of Liability"), Section 8 ("Indemnification"), Section 9 ("Miscellaneous Provisions"), Schedule B ("Transition Assistance") and this Section 4.4 ("Survival").

5. CONFIDENTIALITY.

- 5.1 Definition of Confidential Information.** For the purposes of this Agreement, "**Confidential Information**" means: (a) with respect to Mark43, the SaaS Services, and any and all source code relating thereto, as well as Documentation and non-public information or material regarding Mark43's legal or business affairs, financing, customers, properties or data, and (b) with respect to Subscriber, any non-public information or material regarding Subscriber's or Member Agency's legal or business affairs, financing, customers, properties or data and any and all source code relating to this Agreement in which Subscriber has an ownership interest. Notwithstanding any of the foregoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any action by, or involvement of, the party to which the Confidential Information is disclosed (the "**Receiving Party**"); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other party (the "**Disclosing Party**"); (iii) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who did not receive it, directly or indirectly, from the disclosing party.

- 5.2 Use and Disclosure of Confidential Information.** The Receiving Party will, with respect to any Confidential Information disclosed by the Disclosing Party before or after the Effective Date: (i) use such Confidential Information only in connection with the Receiving Party's performance of this Agreement; (ii) subject to Section 5.4 below, restrict disclosure of such Confidential Information within the Receiving Party's organization to only those of the Receiving Party's employees and independent contractors who have a need to know such Confidential Information in connection with the Receiving

Party's performance of this Agreement and (iii) except as provided herein, not disclose such Confidential Information to any third party unless authorized in writing by the Disclosing Party to do so.

- 5.3 Protection of Confidential Information.** The Receiving Party will protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care).
- 5.4 Employee and Independent Contractor Compliance.** The Receiving Party will, prior to providing any employee or independent contractor access to any Confidential Information of the Disclosing Party, inform such employee or independent contractor of the confidential nature of such Confidential Information and require such employee or independent contractor to comply with the Receiving Party's obligations hereunder with respect to such Confidential Information.
- 5.5 Required Disclosures.** If a party is requested to disclose any of the other party's Confidential Information pursuant to any judicial or governmental order, including the California Public Records Act, unless otherwise required by law, that party will not disclose the Confidential Information without first giving the other party written notice of the request and sufficient opportunity to contest the order, to the extent such notice and opportunity to contest may be lawfully given. If one party is nonetheless legally compelled to disclose Confidential Information, such party may, without liability hereunder, disclose that portion of the Confidential Information which such counsel advises it is legally required to be disclosed. Such party shall cooperate with the reasonable actions of the other party to protect the Confidential Information, including, without limitation, cooperating with the reasonable actions of the other party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be afforded the Confidential Information. Without limiting the foregoing, Subscriber shall notify Mark43 of any request pursuant to the California Public Records Act for records relating to Mark43 (including, without limitation, user guides or Documentation, documents or technical data submitted by Mark43 in response to the RFP, trade secrets, confidential information and software) within ten (10) days of receipt of the request and provide Mark43 with at least ten (10) days' notice before disclosing any such records, but if Mark43 informs Subscriber of a reasonable basis to withhold such documents, and Mark43 agrees in writing that Mark43 will indemnify, defend, and hold harmless Subscriber for withholding such records, then City shall not disclose said records.
- 5.6 Information Collected Through SaaS Services.** Subscriber is solely responsible for compliance with applicable laws related to the manner in which Subscriber chooses to use the Services, including Subscriber's transfer and processing of Subscriber Data. Subscriber understands and agrees that when it uses certain features of the SaaS Services, certain information and data may be collected from Authorized Users, including monitoring and recording activity, and tracking physical location, which may include personal identifying information. Subscriber agrees that Mark43 may use such information to (i) provide more effective Services, (ii) to develop and test its Services, (iii) to aggregate such information and combine it with that of other Users, and (iv) to use anonymous aggregate data to improve the Services or for marketing, research or other business purposes. Provision of Services may involve the disclosure of such information to Vendors or Affiliates on the condition that they agree to treat such information in a manner substantially in accordance with this Agreement. Subscriber may revoke its consent to Mark43's collecting and using such data at any time by written notice to Mark43; provided, however, that Subscriber agrees that such revocation of consent may impair or render impossible the Subscriber's use of the SaaS Services.
- 5.7 CJIS Standards; Employee Background Checks.**
- (a) Subscriber understands and agrees that Mark43 utilizes third party vendors ("Hosting Providers") to host the SaaS Services. As of the Effective Date of this Agreement, Mark43 utilizes Amazon Web Services (AWS) as its Hosting Provider for the SaaS Services. Subscriber may request reasonable records from Mark43 from time to time to assess Mark43's adherence to requirements of the applicable CJIS Security Policy promulgated by the FBI. For the avoidance of doubt, Subscriber may need the consent of Hosting Provider to obtain any records or information from Hosting Provider.
 - (b) Subscriber will have the opportunity to run background checks on Mark43 employees that will have direct access to Subscriber Data in the production environment (such employees, the "Covered Employees"). Within two (2) weeks of Mark43 requesting that Subscriber run a background check for any Mark43 personnel, City shall notify Mark43 of whether the employee passed the background check. Any Covered Employee that receives an adverse response will not be granted access to Subscriber Data. If City does not notify Mark43 within 2 weeks, Mark43 may grant the employee access to Subscriber Data, but only if the Covered Employee has

previously passed a background check conducted by another police or sheriff's department within the prior 6 months.

6. REPRESENTATIONS AND WARRANTIES.

- 6.1 Power and Authority.** Each party represents and warrants that it has the full right, power and authority to enter into this Agreement and to discharge its obligations hereunder and that the person signing this Agreement on behalf of the party has the authority to bind that party. Mark43 covenants that it has the full legal authority, including all intellectual property rights, to authorize Subscriber and the Authorized Users to utilize the SaaS Services and all other activities authorized by this Agreement. Subscriber represents and warrants that it has obtained, and shall have, all necessary approvals, consents, and authorizations necessary for procurement under this Agreement and that its obligations under this Agreement do not, and shall not, exceed any budget authority limitations, during the Term of this Agreement. Subscriber further represents that it has not received federal funding in connection with procurement under this Agreement.
- 6.2 No Other Warranties.** Use of the SaaS Services is not intended to be a substitute for the professional judgment of dispatchers, law enforcement officers, or first responders. The SaaS Services do not provide legal advice. Subscriber shall be responsible for all its own actions or failure to act in connection with the SaaS Services. Mark43 cannot guarantee that every error in the SaaS Services or problem raised by Subscriber will be resolved. THE SERVICES, THE THIRD PARTY COMPONENTS, AND THE THIRD PARTY DATA ARE PROVIDED "AS IS." MARK43 ASSUMES NO RESPONSIBILITY OR RISK FOR SUBSCRIBER'S USE OR MISUSE OF, OR FAILURE TO USE, THE INFORMATION PROVIDED THROUGH THE SAAS SERVICES. MARK43 DOES NOT GUARANTEE THAT EVERY ERROR IN THE SAAS SERVICES OR PROBLEM RAISED BY SUBSCRIBER WILL BE RESOLVED. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6 (INCLUSIVE OF 6.1, 6.2 AND 6.3) NEITHER PARTY MAKES ANY WARRANTY IN CONNECTION WITH THE SERVICES, THE THIRD PARTY COMPONENTS, OR THE THIRD PARTY DATA AND HEREBY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OR UNINTERRUPTED OPERATION OR THAT THE SERVICES, THIRD-PARTY COMPONENTS AND THIRD-PARTY DATA ARE UP TO DATE, ACCURATE OR COMPLETE, SECURE FROM LOSS OR DAMAGE, OR FREE OF HARMFUL COMPONENTS, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. To the extent that a party may not as a matter of Applicable Law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.
- 6.3 CJIS Warranty.** NOTWITHSTANDING SUBSECTION 6.2, MARK43 WARRANTS THAT THE SAAS SERVICES SECURE CRIMINAL JUSTICE INFORMATION (AS DEFINED IN THE FBI'S CRIMINAL JUSTICE INFORMATION SYSTEMS (CJIS) SECURITY POLICY) IN A MANNER CONSISTENT WITH THE MOST RECENT VERSION OF THE FBI'S CJIS SECURITY POLICY, AS AMENDED FROM TIME TO TIME. MARK43 WARRANTS THAT ITS OPERATIONAL POLICIES AND PROCEDURES MEET APPLICABLE FBI REQUIREMENTS GOVERNING THE HANDLING AND TRANSMISSION OF CRIMINAL JUSTICE INFORMATION.

7. LIMITATION OF LIABILITY.

- 7.1 Liability Exclusion.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING FROM THE FURNISHING, PERFORMANCE, OR USE, OR FAILURE OF, OF THE SERVICES, THE THIRD PARTY COMPONENTS OR THE THIRD PARTY DATA PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, PERSONAL INJURY, DEATH, DAMAGE TO PROPERTY, ENVIRONMENTAL DAMAGE, LOSS OF PROFITS, REVENUES, ANTICIPATED SAVINGS, CUSTOMERS, OPPORTUNITIES, DAMAGE TO PRIVACY, REPUTATION OR GOODWILL OR UNAVAILABILITY OF THE SERVICES, REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.
- 7.2 Limitation of Damages.** MARK43'S MAXIMUM LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE), WILL NOT EXCEED THE GREATER OF THE AGGREGATE AMOUNT OF THE FEES PAID AND PAYABLE TO MARK43 BY SUBSCRIBER DURING THE SIX (6) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES OR \$300,000. MARK43 SHALL HAVE NO LIABILITY ARISING OUT OF OR RELATING TO THE THIRD-PARTY COMPONENTS

(INCLUDING, WITHOUT LIMITATION, ANY COMPONENTS OR SERVICES PROVIDED BY WEST COVINA SERVICES GROUP) OR THE THIRD-PARTY DATA.

- 7.3 **Exceptions.** NOTWITHSTANDING THE FOREGOING, THE EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN SECTION 7.1 AND SECTION 7.2 SHALL NOT APPLY TO DAMAGES ARISING FROM EITHER PARTY'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT OR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

8. INDEMNIFICATION.

- 8.1 **Indemnification by Mark43.** To the extent of Mark43's fault, Mark43 will defend, indemnify and hold harmless Subscriber and its Authorized Users, and each of their officers, directors, managers, shareholders, members and employees from any and all claims, liabilities, costs and expenses (including reasonable attorney's fees and expert and consulting fees) in connection with any third party claim arising after the Effective Date that the use of the SaaS Services in accordance with this Agreement infringes or misappropriates the United States intellectual property rights of third party; provided, however, that the foregoing obligations shall be subject to Subscriber (a) promptly notifying Mark43 of the claim, (b) providing Mark43 with reasonable cooperation in the defense of the claim when Subscriber becomes aware and (c) providing Mark43 with sole control over the defense and negotiations for a settlement or compromise; provided, however, that Mark43 shall not enter into any such settlement without Subscriber's prior written consent, which consent will not be unreasonably withheld, and that Subscriber shall be permitted to participate in the defense of any such claim, at its own expense, with counsel of its choosing. Notwithstanding the foregoing, to the extent of Subscriber's fault, Mark43 shall have no obligation with respect to a third party claim to the extent the third party claim arises from: (s) the improper acts or omissions of Subscriber or its users, employees, agents or contractors; (t) claims brought by Subscriber or its Affiliates or Authorized Users; (u) claims arising from the use of old versions software after receipt of modified or updated versions of software that solved such problems; (v) claims caused by the use of Third Party Applications, Third Party Components or Third Party Data; (w) claims caused by any data, product specifications, information or materials provided by Subscriber in connection with this Agreement, when used in connection with the SaaS Services or any customization or configuration made to the SaaS Service provided by Subscriber under a Statement of Work; (x) use of the SaaS Services in combination with modules, apparatus, hardware, software, or services not authorized by Mark43 or specified in the Documentation for use with the SaaS Services; (y) use of the SaaS Services in a manner that is not in accordance with this Agreement or the Documentation; or (z) the alteration or modification of the SaaS Services by a party other than Mark43, unless such alterations and modifications were authorized by Mark43 or specified in the Documentation for use with the SaaS Services.

- 8.2 **Indemnification by Subscriber.** Except where prohibited by law, to the extent of Subscriber's fault, Subscriber will defend, indemnify and hold harmless Mark43 and its Affiliates, and each of their officers, directors, managers, shareholders, members and employees from any and all claims, liabilities, costs and expenses (including reasonable attorney's fees and expert and consulting fees) in connection with (i) any third party claim arising from or relating to any allegation that any data, product specifications, information or materials provided by Subscriber hereunder, including, without limitation, the Subscriber Data and Third Party Applications, when used in connection with the SaaS Services or any customization or configuration made to the SaaS Service proposed by or provided by Subscriber under a Statement of Work (a) infringes or misappropriates any Intellectual Property Rights of a third party, or (b) violates any Applicable Laws; (ii) the actual or alleged violation of Applicable Law by Subscriber, any Authorized User, or any Affiliate, employee, agent or independent contractor of Subscriber; or (iii) Subscriber's breach of this Agreement; provided, however, that the foregoing obligations shall be subject to Mark43 (x) promptly notifying Subscriber of the claim, (y) providing Subscriber with reasonable cooperation in the defense of the claim and (z) providing Subscriber with sole control over the defense and negotiations for a settlement or compromise; provided, however, that Subscriber shall not enter into any such settlement without Mark43's prior written consent, which consent will not be unreasonably withheld, and that Mark43 shall be permitted to participate in the defense of any such claim, at its own expense, with counsel of its choosing. Notwithstanding the foregoing, to the extent of Mark43's fault, Subscriber shall have no obligation with respect to a third party claim to the extent the third party claim arises from: (A) the improper acts or omissions of Mark43 or its employees, agents or contractors; or (B) claims brought by Mark43 or its Affiliates or agents.

9. MISCELLANEOUS.

9.1 Notices. Unless otherwise specified herein, all notices and other communications between the parties required or permitted by this Agreement or by Applicable Law, will be deemed properly given, if given by (i) personal service, (ii) registered or certified mail, postage prepaid, return receipt requested, or (iii) nationally recognized private courier service, to the respective addresses of the parties set forth below or such other addresses as the respective parties may designate by like notice from time to time. Notices so given will be effective upon (a) receipt by the party to which notice is given; or (b) on the fifth (5th) business day following mailing, whichever occurs first:

If to Mark43:

Mark43, Inc.
28 E. 28th Street
12th Floor
New York, NY 10016
Attn: David Jochim
Email: dave@mark43.com

If to Subscriber

City of West Covina
1444 West Garvey Ave.
West Covina, CA 92790
Attn: Police Lt. Ken Plunkett
Email: ken.plunkett@wcpd.org

Copy to:

Mark43, Inc.
28 E. 28th Street
12th Floor
New York, NY 10016
Attn: General Counsel
Email: contractnotices@mark43.com

Copy to:

Jones & Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92835
Attn: West Covina City Attorney
Email: sep@jones-mayer.com

9.2 Assignment. Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of the other party; provided, however, that a party may, without the consent of the other party, assign or otherwise transfer this Agreement to any of its Affiliates or to an entity with or into which it is merged or consolidated or to which it sells its stock or other equity interests or all or substantially all of its assets but only if such entity has the financial capability to, and in fact agrees to, perform all of the assignor's obligations in this agreement. Any assignment or other transfer in violation of this section will be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

Notwithstanding anything else in this Agreement to the contrary, Subscriber consents to the use of any subcontractors identified in the RFP or on Schedule A to perform the services identified on Schedule A.

9.3 Dispute Resolution. In the event of a dispute arising under or relating to this Agreement, the parties agree to finally and exclusively resolve the dispute by binding arbitration governed by the Federal Arbitration Act ("FAA"). All disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the FAA. Any court with jurisdiction over the parties may enforce the arbitrator's award. The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association (AAA) then in effect, which is available at the AAA website www.adr.org. If those rules conflict with this provision, this provision shall control. The arbitration shall be conducted before a panel of one or more arbitrators. The arbitrator(s) shall be selected from the AAA's National Roster of Arbitrators pursuant to agreement between the parties or through selection procedures administered by the AAA. The arbitration may be conducted in person, through the submission of documents, by phone or online. If conducted in person, the arbitration shall take place in Los Angeles County, California. The arbitrator(s) shall determine the matters in dispute strictly in accordance with the terms of this Agreement and the substantive law of the State of California, excluding its principles of conflicts of laws, except that the interpretation and enforcement of this arbitration provision shall be governed by the FAA. The parties agree that Los Angeles County, California, USA is the proper forum for any appeals of an arbitration award or for trial court proceedings in the event that the arbitration provision herein is found to be unenforceable.

The award of the arbitrator(s) shall be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues or accountings presented or pled to the arbitrators, provided that

THE ARBITRATOR(S) SHALL HAVE NO AUTHORITY TO AWARD EITHER PARTY ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS), OR ATTORNEYS' FEES OR COSTS. The parties may litigate in court and shall submit to the personal jurisdiction of the federal and state courts located in Los Angeles County, California, USA, for any action to do the following: (i) to compel arbitration; (ii) to stay proceeding pending arbitration; (iii) seek injunctive or other equitable relief to prevent the actual or threatened infringement, misappropriation or violation of a its copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights, including any provisional relief required to prevent irreparable harm; (iv) to protect or defend the ownership, validity or enforcement of any intellectual property rights; (v) or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator. The parties agree that Los Angeles, CA USA is the proper forum for any appeals of an arbitration award or for trial court proceedings in the event that the arbitration provision herein is found to be unenforceable.

The arbitration award and record, and any Confidential Information that is used at or in connection with the arbitration shall not be disclosed to third parties by the arbitrator(s) or the parties without the prior written consent of both parties. Neither the fact that the arbitration occurred nor the result of the arbitration shall be admissible in evidence in a subsequent proceeding brought on the same claims that were presented at the arbitration.

- 9.4 Force Majeure.** Except with respect to failure to pay any amount due under this Agreement, nonperformance of either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts that are not caused by or within the control of the nonperforming party, orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.
- 9.5 No Waiver.** The failure of either party to enforce at any time for any period any provision hereof will not be construed to be a waiver of such provision or of the right of such party thereafter to enforce each such provision, nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver of any rights is to be charged against any party unless such waiver is in writing signed by an authorized representative of the party so charged.
- 9.6 Amendment.** No modification, change or amendment to this Agreement shall be effective unless in writing signed by Subscriber and Mark43. No term included in any invoice, estimate, confirmation, acceptance, purchase order or any other similar document in connection with this Agreement will be effective unless expressly stated otherwise in a separate writing signed by Subscriber and Mark43.
- 9.7 Relationship of the Parties.** The relationship of the parties established by this Agreement is that of independent contractors and nothing contained herein will be construed to (a) give any party any right or authority to create or assume any obligation of any kind on behalf of any other party or (b) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.
- 9.8 Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, to the extent the economic benefits conferred thereby to the parties remain substantially unimpaired, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions or affecting the validity or enforceability of any of such terms or provisions in any other jurisdiction.
- 9.9 Headings.** The titles and headings contained in this Agreement are for reference purposes only and shall not in any manner limit the construction or interpretation of this Agreement.
- 9.10 Counterparts.** This Agreement may be executed, including by electronic signature, in two or more counterparts, each of which shall be an original and all such counterparts together shall constitute one and the same instrument. Electronically executed or electronically transmitted (including via facsimile transmission) signatures have the full force and effect of original signatures.
- 9.11 Cumulative Remedies.** All remedies for breach of this Agreement are cumulative, and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 9.12 Export Compliance.** In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control.

9.13 Compliance with Laws. Each party shall comply with all Applicable Laws relating or pertaining to the use of the Services. Subscriber shall ensure that its use of all Subscriber Data complies with all Applicable Laws relating to the privacy of third parties or the protection of their personal data promulgated by any governmental, municipal, or legal authority having jurisdiction over Subscriber or the End User Data covered by this Agreement. “**Applicable Laws**” means all applicable provisions of all (x) constitutions, treaties, statutes, laws (including the common law), rules, directives, regulations, ordinances, codes or orders of any governmental authority and (y) orders, decisions, injunctions, judgments, awards and decrees and consents of or agreements with any such entity. Each party shall comply with local anti-bribery laws as well as the U.S. Foreign Corrupt Practices Act, as well as any other applicable laws and regulations. In connection with its performance under the Agreement, neither party shall directly or indirectly: (A) offer, pay, promise to pay, or authorize the payment of any money, gift or other thing of value to any person who is an official, agent, employee, or representative of any government or instrumentality thereof or to any candidate for political or political party office, or to any other person while knowing or having reason to believe that all or any portion of such money, gift or thing of value will be offered, given, or promised, directly or indirectly, to any such official, agent, employee, or representative of any government or political party, political party official or candidate; (B) offer, promise or give any person working for, or engaged by, the other party a financial or other advantage to (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; or (C) request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement. Each party represents and warrants that it shall be responsible for compliance with this provision by all third parties engaged by it to perform services related to this Agreement and shall require that such third parties agree to comply with all legal requirements required of such party under this Agreement.

9.14 Certain Waivers Unenforceable. Subscriber agrees that it will not ask Mark43, or any Mark43 employee or contractor, to sign a document that waives liability for property damage, injury, or death in the furtherance of the purposes of this agreement. Subscriber further agrees that any such waiver signed by a Mark43 employee or contractor is null, void, and unenforceable against Mark43 and its employees and contractors.

9.15 Entire Agreement. This Agreement supersedes all previous understandings, agreements and representations between the parties, written or oral and constitutes the entire agreement and understanding between the parties with respect to the subject matter thereof and incorporates all representations, warranties, covenants, commitments and understandings on which they have relied in entering into this Agreement, and, except as provided for herein, neither party makes any covenant or other commitment concerning its future action nor does either party make any promises, representations, conditions, provisions or terms related thereto.

9.16 Supporting Documents.

The following documents are, by this reference, expressly incorporated into this Agreement and are collectively referred to herein as the “Supporting Documents:”

- Schedule A: Services Schedule
- Schedule B: Transition Assistance
- Schedule C: Technical Requirements
- Schedule D: Additional License Terms
- Exhibit 1: Member Admission Agreement
- Exhibit 2: Member Agencies
- Exhibit 3: Rate Card

This Agreement and the Supporting Documents shall be construed to be mutually complimentary and supplementary whenever possible. In the event of a conflict that cannot be resolved, the provisions of this Agreement itself shall control over any conflicting provisions in any of the Supporting Documents.

10. MEMBER AGENCIES

10.1 Admission of Member Agencies. The agencies listed in Exhibit 2 are eligible to be admitted as Member Agencies as defined in this Agreement, subject to execution of a Member Admission Agreement by Subscriber, Mark43, and the Member Agency substantially in the form set forth in Exhibit 1. For purposes of this Section 10, any reference to “Subscriber” shall be deemed to exclude the Member Agencies.

- 10.2 Method to Obtain Services.** A new agency may gain access to Mark43's Services hereunder upon execution of the Admission Agreement in the form attached as Exhibit 1 hereto and signed by Subscriber, Mark43, and the Member Agency. Member Agencies must be geographically located in the jurisdictions listed on Exhibit 2 unless otherwise agreed in writing by Mark43 and Subscriber. The additional Fee for the addition of the new Member Agency is set forth in Section 4 of Schedule A. The Member Agency must agree to be bound by all obligations of Subscriber under this Agreement as if it were the Subscriber.
- 10.3 Member Agencies.** The parties to this Agreement agree that Subscriber shall be deemed the primary point of contact for those agencies listed in Exhibit 2, "Member Agencies". Each Party to this Agreement agrees to work in good faith with the other and to not undercut, but to instead support the marketing actions of the other. For the avoidance of doubt, any request by a potential customer to enter into a direct relationship with Mark43 (rather than become a Member Agency) shall not be deemed a violation of the prior sentence provided the rates charged by Mark43 are not less than the rates Mark43 would charge to Subscriber if the potential customer became a Member Agency.
- 10.4 Compensation.** Each new Member Agency shall pay Subscriber directly for the Mark43 Services received. Subscriber shall remit to Mark43 payment as set forth on Schedule A hereto and Subscriber may charge the Member Agencies whatever price it believes is reasonable.
- 10.5 Effect of Client Non-Payment.** Upon request from Subscriber, Mark43 shall transmit an invoice to Subscriber stating the amounts owed to Mark43 for Services provided to a Member Agency. Within 45 days of receipt, Subscriber shall transmit to Mark43 the Fees received from any Member Agency, unless there is a dispute between Mark43 and Subscriber involving such Fees, in which case Subscriber shall transmit any undisputed amounts to Subscriber, and promptly remit any additional required amounts once the dispute is resolved. Subscriber is not required to transmit the Fees if the Member Agency has not provided them to Subscriber, provided that any payment received by Subscriber will be applied to Subscription Fees owed to Mark43 prior to any fees owed to Subscriber.
- 10.6 Enforcement Against Member Agency.** Notwithstanding Section 11.1 of this Agreement, if a Member Agency is admitted pursuant to this Section 10, Subscriber shall use its reasonable efforts to cause Member Agency to perform in accordance with this Agreement, the Member Agency Agreement and any other agreement relating to the payment of Fees by a Member Agency. Mark43 reserves the right to enforce violations of the Member Agency against the Member Agency. In accordance with Section 9.5 of this Agreement, the pursuit of remedies against one Party shall not waive Mark43's right to pursue remedies against the other Party.
- 10.7 New Services.** Any new, or changes to, Services offered to a Member Agency, shall be identified on Exhibit A to the Admission Agreement. Such Services shall be included within the definition of Services under this Agreement, provided that Mark43 shall have no obligation to offer such new or additional Services to Subscriber or any other Member Agency. The cost of any new or changed Services shall be the sole responsibility of the Member Agency, and Subscriber has no responsibility for payment of the cost of those new or changed Services, except to the extent that Subscriber receives payments owed to Mark43.
- 10.8 Fees.** The Fees set forth in Section 4 of Schedule A to the Agreement are inclusive of, and in consideration for Member Agency's use of the Services and Mark43's performance.

11. Cooperative Purchasing

- 11.1** To enable cooperative purchasing between public agencies, nonprofits and other political subdivisions, and other public agencies, may purchase from this Agreement. Mark43 may accept or decline such orders and may propose additional or modified pricing, terms and conditions in response to such order. The Subscriber accepts no responsibility for the payment of the purchase price by other public agencies. Should Mark43 require additional pricing, terms or conditions for such purchases, Mark43 will name such additional pricing, terms and conditions to the other governmental agency prior to accepting an order.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

MARK43, INC.

By: Matthew N. Polega
Name: Matthew N. Polega
Title: Cofounder & VP of Operations
Date: 4/19/2019

By: _____
Name: _____
Title: _____
Date: _____

CITY OF WEST COVINA

By: David Carmany
Name: David Carmany
Title: Interim City Manager
Date: 4/29/2019

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

MARK43, INC.

CITY OF WEST COVINA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

By:  _____

Name: Steven Solbetta

Title: Chief Financial Officer

Date: 4/19/2019

SCHEDULE A

Services Schedule

1. **Services**. The Services covered by this Agreement consists of the following:

a. **Professional Services:**

i. **Implementation Phase:**

1. The Professional Services to be performed by Mark43 for the City of West Covina are as follows:

- a. Four (4) hours of implementation assistance
- b. Remote train the trainer courses
- c. Cutover support and quality assurance
- d. Full access to Mark43's help desk

All other professional services relating to implementation shall be performed by the City of West Covina, including without limitation training, integration development, data migration and cutover.

b. **SaaS Services:**

i. The Applications to be provided are described as follows:

1. **Mark43 Records Management (RMS)**

Report Writing

- In-station and mobile field reporting
- Incident, Offense and Arrest Reports
- Field Contact Reports
- Use of Force Reports
- Active Error Validation
- Smart Duplicate Data Entry Logic and Prevention
- Unlimited Report Attachments
- Auto-Validation of Fields, Locations and People
- Word Processing Tools
- Context Sensitive Report Export Formats
- Fully Report Audit History
- Email and In-App Notifications
- User Specific Reports Dashboard

Case Management

- Seamless Report Import
- Active Master Entity Sync
- Unlimited Case Attachments
- Dashboard for Case Tracking
- Configurable Task Lists by Case Type
- Dynamic Master Entity Profiles
- Email and In-App Notifications
- Context-Sensitive Case Export Formats

Property and Evidence

- Mobile Device Application for Barcode Scanning, Audits and ID Capture
- Automatic Custodial Property Report Generation
- Master Item Profile
- Configurable Barcodes and Disposition Notifications
- Bulk Item Filtering and Actioning
- Dashboard for Inventory Management
- Immutable Chain of Custody
- Storage Location Setup and Customization
- Email and In-App Notifications
- Full Evidence Audit History
- Chain of Custody Validations and Guardrails

- Digitally capture signatures and photos ID's
- Batch Label Printing
- Support for Zebra Printing
- Automated disposition approval process with customizable retention periods

Warrant Management

- Linked Incident/Arrest Reports, Warrants, and Entity Records
- Dashboard for Warrant Tracking and Management
- Configurable Warrant Number Format, Fields and Permissions
- Context-Sensitive Warrant Export Formats

Stat Reporting and Crime Analysis

- Active Error Detection
- Automatic NIBRS Code Mapping
- Integrated NIBRS Workspace for Report Creation
- Advanced CAD, RMS and Entity Search
- Multi-Input and Fuzzy Match Search Filters
- Comprehensive Analysis Filters

System Administration

- Configurable Permissions & Roles for Individual Users & Records
- Configurable Fields, Statutes, Codes & Validation Rules
- Shapefile Import
- Configurable Street & Location Aliases
- Configurable Department Alerts & Notifications
- IP Address Whitelisting & Blacklisting for Enhanced Security
- Open API for Third-Party Connections
- Custom Units, Teams and User Roles
- Automatic UCR & NIBRS coding
- Permission-based Read/ Write Privileges

2. Mark43 Computer Aided Dispatch (CAD)

Dispatcher

- Individualized Workstation Setup
- Unit Management and Monitoring
- Auto Complete Verified Event Locations & ANI/ALI Data
- Prominent Alerts for New Information
- Configurable Command Line Functionality
- Bi-Directional Syncing of Historical RMS Data
- Multi-Layered AVL Map View
- Real-Time Event Chat
- Override Ability for Unit Recommendations
- Event Management

First Responder (Mobile)

- Seamless RMS Report Generation
- Prominent Alerts for New Information
- Bi-Directional Syncing of Historical RMS Data
- Real-Time Event Chat
- Multi-Layered AVL Map View
- Automatic & Manual Status- Setting Ability
- Automatic Vehicle Location Mapping (Integration)
- In-App Messaging

System Administrator

- Desktop, Laptop & Tablet Agnostic

- Web-Based & Installed Application Options
- Vendor-Free Configurations
- Scheduling System Integration
- Seamless Data Exchange for External Databases
- Full Event Log
- IP Address Whitelisting & Blacklisting for Enhanced Security
- Open API for Third- Party Connections

3. Mark43 Data Exchange [Optional Application]

- a. If agreed by the Parties, Mark43 or a partner/subcontractor will connect the Mark43 Public Safety Platform to Federal, state and local criminal justice data sources. Mark43 utilizes a third party middleware component in the Mark43 Public Safety Platform and uses a third party to perform services to setup and maintain these connections and provides support during training, configuration and implementation phases of the project. If Subscriber elects to purchase, the Parties agree to evaluate the requirements together and agree on a time frame for completion. Subscriber is responsible for determining which of these downstream data feeds will continue to receive information at cutover. Subscriber, with the consent of Mark43, is also responsible for determining the policies and procedures surrounding interfaces between Mark43 Applications and third-party databases. Subscriber understands and agrees that third party service providers and Mark43 may impose additional license, warranty and other terms on Subscriber. Subscriber agrees to enter into additional agreements as reasonably required by such third parties and Mark43, including, without limitation, a different warranty/SLA addressing uptime and maintenance of the Data Exchange Services.

4. Mark43 Data Lake [Optional Application]

- a. If Subscriber elects to purchase Mark43 Data Lake, the Parties agree to evaluate the requirements together and agree on a time frame for completion. Subscriber understands and agrees that third party service providers may impose additional license, warranty and other terms on Subscriber. Subscriber agrees to enter into additional agreements as reasonably required by such third parties and Mark43, including, without limitation, a different warranty/SLA addressing uptime and maintenance.

5. Mark43 Business Intelligence (BI) Suite [Optional Application]

- a. If Subscriber elects to purchase Mark43 BI Suite, the Parties agree to evaluate the requirements together and agree on a time frame for completion. Additional charges will apply. Subscriber understands and agrees that third party service providers may impose additional license, warranty and other terms on Subscriber. Subscriber agrees to enter into additional agreements as reasonably required by such third parties and Mark43, including, without limitation, a different warranty/SLA addressing uptime and maintenance.

2. **Initial Term.** The Initial Term is the **7-year period** commencing on the Effective Date.

3. **Renewal Terms.** Any Renewal Terms shall be for a period of **one year**.

4. **Fees:**

- a. **Subscription Fees.** Details of Subscription Fees for Subscriber and Member Agencies shall be set forth in a separate Pricing Agreement between the parties, and shall be interpreted such that the terms are as fully set forth herein (the "**Pricing Agreement**").
- b. **Fees for Professional Services for the City of West Covina:** Details shall be set forth in the Pricing Agreement.
- c. **Fees for Professional Services for Member Agencies:** No Professional Services are contemplated to be provided by Mark43 for the Member Agencies, but any such services requested by a Member Agency shall be subject to fees as set forth on the rate card attached as Exhibit 3.
- d. **Change of Fees.** Mark43 will notify Subscriber of any changes to the Fees for a Renewal Term at least forty-five (45) days prior to the start of the Renewal Term.

5. **Payment Schedule.** Subscriber will pay the Fees on the following schedule:
 - a. Initial Term: Fees will be paid on the following schedule:
 - i. For the City of West Covina: Subscription Fees for the first four (4) years of the Initial Term to be paid upfront upon the Effective Date, and Subscription Fees paid annually beginning with the fourth anniversary of the Effective Date for each subsequent year of the Initial Term.
 - ii. For Member Agencies: Subscription Fees paid annually upfront for each year of their term commencing with the effective date of such agency's Member Agency Admission Agreement.
 - b. Renewal Term: Fees for any Renewal Term will be paid in full in advance on the first day of the Renewal Term.

6. **Support Services.** As part of the SaaS Services, subject to Section 2.4 of the Software and License Agreement, Mark43 shall establish, sufficiently staff and maintain the organization and processes necessary to provide telephone and/or email based technical support, troubleshooting, error identification, isolation and remediation, and other assistance directly to Subscriber and its Authorized Users to support Subscriber's use, deployment and validation of the SaaS Services on a 24x7 basis, and after normal business hours and on holidays, as necessary to support Mark43's obligations under this Agreement. The contact information for Mark43's technical support organization is Support@mark43.com and Mark43 will notify Subscriber in writing of any changes no less than 5 days in advance. Mark43 shall provide Subscriber with online access to its knowledge database and any other resource containing information that will aid in problem and error resolution and correction, as well as any other technical resources made electronically available to any of Mark43's other customers. The Mark43 account manager or primary point of contact for Subscriber with respect to this Agreement will be Allan Mackiewicz.

7. **Service Levels.** Mark43 shall provide the Applications in accordance with the following services levels.
 - a. **Service Levels for the Records Management System and Evidence Management Applications (hereinafter, "RMS").**
 - i. **RMS Availability.** During any calendar month of a Regular Usage Period, the RMS shall be available to users no less than 99.9% of the time on a 24x7 basis, excluding scheduled maintenance of the RMS ("**RMS Scheduled Downtime**"); provided, however, that Mark43 is not responsible for any downtime of the RMS caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), or Third Party Components, and such Third Party downtime will not count against the service levels promised herein; provided, further, that Mark43 shall be responsible for any downtime of RMS caused by Integrated Third Party Software (as defined below) solely to the extent specified in Section 7(c) below ("**Service Levels for Integrated Third Party Software**"). Mark43 shall provide Subscriber with prompt notification as soon as it becomes aware of any actual or potential unscheduled downtime (defined below) of the RMS, as well as continual periodic updates during the unscheduled downtime regarding Mark43's progress in remedying the unavailability and the estimated time at which the RMS shall be available.
 - ii. **RMS Service Credits.** In the event that Mark43 fails to make the RMS available at least 99.9% of the time in any given month during the Regular Usage Period due to RMS Unavailability (as defined below), Mark43 will credit the Subscriber's account for the unavailable RMS as follows:

RMS Availability (Monthly)	Credit Percentage
Above 99.9%	0%
99.8 – 99.0%	10%
98.9 – 98.0%	20%
Below 97.9%	30%

"RMS Unavailability" is defined as the percentage of minutes per month in which the RMS is completely and generally unavailable for Subscriber's use (but not the use of any one Authorized User), provided that RMS Unavailability does not include any unavailability attributable to: (a) RMS Scheduled Downtime for maintenance (whether by Mark43, by a vendor, or by Subscriber); (b) acts or omissions of Subscriber or any Subscriber user of the RMS; (c) server downtime related to connectivity issues resulting from Third Party-managed VPN access to hosted server or Subscriber internal network problems; (d) defects or bugs in the Applications or Software caused by Subscriber, any Authorized User, or any Affiliate, employee, agent or independent contractor of Subscriber; or (e) any other cause(s) beyond Mark43's reasonable control, including but not limited to those caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), Third Party Components, overall internet congestion or a force majeure.

Subscriber will be responsible for immediately notifying Mark43 of all Third Party-managed VPN access and internal or external (e.g. internet service provider) network problems that arise.

“Credit Percentage” means the applicable percentage of the portion of the Fees attributable to Services in the calendar month in which the RMS Unavailability occurs. For example, if Subscriber owes Mark43 \$1,000 for one year of a Regular Usage Period, and the RMS Availability falls to 99.5% during any calendar month in that year, then Mark43 will owe Subscriber a 10% credit on that month’s portion of the Fee, or: $\$1,000/12 = \83.33 per month, and $10\% \text{ of } \$83.33 = \8.33 . In this example, Mark43 would owe Subscriber \$8.33 in credit for the month in which RMS Availability fell to 99.5%.

In order to receive this credit, Subscriber must notify Mark43 in writing within thirty (30) days following the end of the month the RMS Unavailability occurred. All claims are subject to review and verification by Mark43 prior to any credits being granted. Mark43 will acknowledge credit requests within fifteen (15) business days of receipt and will inform Subscriber whether such claim request is approved or denied. The issuance of RMS Service Credit by Mark43 hereunder is Subscriber’s sole and exclusive remedy for any failure by Mark43 to satisfy the service levels set forth in this Section 7(a).

b. **Service Levels for the Computer Aided Dispatch Application (CAD).**

- i. **CAD Availability.** During any calendar month of a Regular Usage Period, CAD shall be available to Subscriber no less than 99.95% of the time on a 24x7 basis, excluding scheduled maintenance of CAD (“**CAD Scheduled Downtime**”); provided, however, that Mark43 shall not be responsible for downtime of CAD under this section caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), or Third Party Components, and such Third Party downtime will not count against the service levels promised herein. Any CAD Scheduled Downtime shall be scheduled on minimal traffic days whenever possible. The parties agree that the total amount of CAD Scheduled Downtime shall not exceed 60 minutes during any 30-day period. Mark43 shall provide Subscriber with immediate telephone notification to the point of contact set forth in the Agreement as soon as it becomes aware of any actual or potential unavailability of CAD other than CAD Scheduled Downtime (“**CAD Unscheduled Downtime**”), as well as continual periodic updates during the CAD Unscheduled Downtime regarding Mark43’s progress in remedying the unavailability and the estimated time at which the CAD shall be available.
- ii. **Error Response and Resolution.** When reporting a failure of the CAD to Mark43 (a “**CAD Error**”), Subscriber shall identify the CAD Error as a Severity Level 1, 2, or 3 (each defined below) based on Subscriber’s initial evaluation. If Mark43 becomes aware of a Severity Level 1 or 2 CAD Error, Mark43 shall promptly, but in no event to exceed the Initial Response timeframe in the chart set forth below, notify Subscriber, and such notice shall identify the CAD Error as a Severity Level 1 or 2 CAD Error based on Mark43’s initial evaluation. Mark43 and Subscriber shall cooperate in good faith to jointly determine whether a CAD Error is a Severity Level 1, 2, or 3 CAD Error; provided, however, that in the event that Mark43 and Subscriber cannot come to such joint determination despite such good faith cooperation, Mark43’s reasonable determination shall control. Subscriber may report to Mark43 any Severity Level 1 or 2 CAD Error 24 hours per day, 7 days per week, and any Severity Level 3 CAD Error during Mark43’s normal business hours. Upon notification by Subscriber of a CAD Error, Mark43 shall commence and diligently pursue correction of such CAD Error, at all times employing at least the level of effort (“**Level of Effort**”) designated in the chart set forth below and in all instances providing an Initial Response, temporary resolution or fix (a “**Work Around**”) and a permanent fix (a “**Permanent Correction**”) to Subscriber within the timeframes in the chart set forth below, as measured from the earlier of the time that Subscriber notifies Mark43 or Mark43 first becomes aware of a CAD Error. Mark43 shall provide Subscriber with updates to the status of Mark43’s efforts (the “**Status Updates**”) by telephone, email or such other means as may be reasonably designated by Subscriber from time to time, no less frequently than the timeframes identified in the chart set forth below.
 1. “**Severity Level 1 CAD Error**” means any CAD Error that, for fifty percent (50%) or more of Subscriber’s dispatchers, renders the CAD or any material portion thereof inoperative, or materially impairs use of the CAD in a production environment. Examples of Severity Level 1 CAD Errors include, without limitation, situations in which the CAD are inoperable and causing dispatchers to experience a total loss of service, continuous or frequent instabilities, a loss of connectivity or inability to communicate as intended, or there is an inability to process transactions, the creation of a hazard or emergency, or the inability to use a primary feature or function of the CAD.
 2. “**Severity Level 2 CAD Error**” means any CAD Error that, for fifty percent (50%) or more of Subscriber’s dispatchers, substantially impairs use of one or more features or functions of the CAD, which constitute less than a material portion thereof, in a production environment, or any CAD Error occurring in a testing or other non-production environment that, if occurring in a production environment, would constitute a Severity Level 1 CAD Error. Examples of Severity Level 2 CAD

Errors include, without limitation, situations in which a CAD Error is causing intermittent impact to dispatchers, loss of redundancy, loss of routine administrative or diagnostic capability, or inability to use a secondary feature or function of the CAD.

3. **“Severity Level 3 CAD Error”** means any CAD Error that, for fifty percent (50%) or more of Subscriber’s dispatchers, has a minimal impact on the performance or operation of the CAD. Examples of Severity Level 3 CAD Errors include, without limitation, a CAD Error having only a minimal impact on dispatchers and CAD Errors seen in a test or other non-production environment that, if deployed in a production environment, would not constitute a Severity Level 1 CAD Error.

Severity Level	Level of Effort	Initial Response	Work Around	Permanent Correction	Status Updates
1	Continuous best efforts, 24 hours per day, 7 days per week	Immediate , but in no event to exceed 30 minutes	6 hours	3 calendar days	Every 3 hours prior to a Work Around and every calendar day thereafter
2	Commercially reasonable efforts, 24 hours per day, 7 days per week	1 hour	24 hours	5 calendar days	Every 6 hours prior to a Work Around and every calendar day thereafter
3	Commercially reasonable efforts, during normal business hours	1 Business Day	10 Business Days	20 Business Days	Every 2 Business Days prior to a Work Around and every 5 Business Days thereafter

CAD Service Credits. Mark43’s failure to meet the CAD services levels set forth in Section 7(b) during any calendar month of a Regular Usage Period entitles Subscriber to Fee credits (the **“CAD Service Credit(s)”**) calculated as set forth below. Any CAD Service Credits owed to Subscriber hereunder shall offset against any subsequent Fees owed by Subscriber and shall be Subscriber’s sole and exclusive remedy with respect to Mark43’s failure to provide the CAD. If Mark43 fails to meet the CAD service levels set forth in this Section 7(b) in any applicable calendar month during the Regular Usage Period, then Mark43 shall credit Subscriber five percent (5%) of the portion of the Fees attributable to CAD Services in the calendar month in which such CAD service level failure occurs. The applicable CAD Service Credits will be applied to the next invoice. Only one CAD Service Credit for failure to meet the applicable service level shall be granted for each Service in a calendar month of the Regular Usage Period.

- c. **Levels for Integrated Third Party Software.** Notwithstanding anything else to the contrary contained herein, Mark43 shall be responsible for any downtime of or related to the Applications or Integrated Third Party Software (as defined below) that is caused by Integrated Third Party Software solely to the extent specified in this Section 7(c). Credit Percentages Service Credits referenced elsewhere in this Contract shall not apply to downtime caused by Integrated Third Party Software or the integrations or connections to Integrated Third Party Software.
 - i. **Availability of Third Party Applications.** Schedule A identifies specific Third Party Application integrations (the **“Integrated Third Party Software”**) to be performed by Mark43 during the Professional Services Period, and the Subscriber’s and Mark43’s respective rights regarding acceptance of those Services. During the Regular Usage Period, the Integrated Third Party Software shall be operational no less than 99.9% of the time on a 24x7 basis, excluding any scheduled maintenance of the Integrated Third Party Software (whether scheduled by Mark43 or by the third party provider, the **“Integration Scheduled Downtime”**); provided, however, that Mark43 shall not be responsible for downtime caused by upgrades or updates to Integrated Third Party Software for which Mark43 does not receive the requisite advance notice, and such downtime will not count against the service levels promised herein. Mark43 agrees that it shall schedule any Integration Scheduled Downtime on minimal traffic days whenever possible. The Parties further agree that Mark43 shall not schedule in excess of 90 minutes of Integration Scheduled Downtime in during any 30-day period. Mark43 shall provide Subscriber with immediate telephone notification to the point of contact set forth in the Contract as soon as it becomes aware of any actual or potential unavailability of an Integration other than Integration Scheduled Downtime (**“Integration Unscheduled Downtime”**), as well as continual periodic updates during the Integration

Unscheduled Downtime regarding Mark43's progress in remedying the unavailability and the estimated time at which the Integration shall be available.

- ii. **Responsibilities for Planned Updates.** Mark43 shall undertake commercially reasonable efforts to patch, repair or update the Software in order to integrate it with the updated Integrated Third Party Software.
- iii. **Responsibilities for Planned Upgrades.** Subscriber shall provide Mark43 with prompt notice, and in no case fewer than sixty (60) days' advance notice, of any planned upgrade by the Third Party provider of Integrated Third Party Software affirmatively requested by Subscriber. Mark43 shall evaluate the time and resources required to patch, repair or update the Software in order to integrate it with the upgraded Integrated Third Party Software. The Parties shall engage in good faith negotiations to agree on the terms (including, without limitation, schedule and price) on which Mark43 would develop a patch, repair, update or Upgrade to integrate the Software with the Integrated Third Party Software. Mark43 grants any legal rights it may have to Subscriber to allow Subscriber to create, at its own expense, and at Subscribers option, software to create and/or update any interfaces or patches necessary to allow the Third Party Software to operate.

SCHEDULE B

Transition Assistance

Upon termination of the Agreement for any reason, and subject to all Fees due being paid in full, Mark43 will create searchable PDFs of each record (each, a "**Record**") and provide them to the Subscriber for download. Subscriber shall have the authority to obtain all such records in their native format. Subscriber may request, and Mark43 will consider, other formats in which to create the Records, but the final format of all Records will be determined in Mark43's sole discretion. At no cost to Subscriber, Records can be uploaded to Subscriber's new records management system by the Subscriber or its new vendor.

1. Preparation

- a. The Subscriber will provide the desired cutoff date of the SaaS Services (the "**Cutoff Date**"), at which time all existing user accounts will be terminated.
- b. Mark43 will provide one (1) account for the Subscriber to access a web-based storage platform to retrieve Subscriber documents and Records (the "**Transition Account**"). The Transition Account will be available to Subscriber for thirty (30) days prior to the Cutoff Date.

2. Content

- a. Each Report in Mark43 will be recreated as a searchable PDF (or other mutually agreed to format as described above) using the standard Mark43 format then in use.
- b. All archive files will be accessible via the internet on the Cutoff Date.

3. Support

- a. Mark43 will maintain Subscriber data in Mark43 for up to 1 year following the Cutoff Date.
- b. Mark43 will maintain Subscriber PDF archives for up to 2 years following the Cutoff Date.
- c. Mark43 will resolve any issues it deems to be the result of errors in the Mark43 platform or export process for a period of six (6) months after the Cutoff Date.
- d. No less than 1 year after the Cutoff Date, Mark43 will delete Subscriber Data from all Mark43 online systems (e.g. primary database, replica databases, search databases, application caches, etc.) other than database backups, audit logs and server system logs.
- e. Within 6 months from the date of deletion of Subscriber Data from all Mark43 online systems, all Subscriber Data will be erased from database backups.
- f. Notwithstanding the foregoing, Mark43 reserves the right to retain Subscriber Data on audit logs and server system logs and in support tickets, support requests and direct communications with Mark43.

Transition Assistance as outlined in this Schedule B is included in the Fees charged to Subscriber for the Services. Fees are due and payable up to the Cutoff Date. In the event that any Fees have not been paid as required in this Agreement, Mark43 may retain all Records and decline to provide the support outlined in Section 3 of Schedule B above until such Fees are paid in full.

SCHEDULE C

Technical Requirements

This Schedule lists the minimum technical requirements required for Mark43's RMS, CAD, Evidence Management and Data Exchange applications. This also describes the requirements for Mark43 interface servers. Third Party Providers and subcontractors may have additional requirements that are not listed here.

1. MARK43 RMS

1.1 RMS Workstation Requirements

Item	Minimum	Recommended
Operating System	Windows 7+, Apple OS X 10.X	Windows 10, Mac OS 10.X
Processor	1x dual-core processor	1x dual-core processor or greater
Architecture	x64 / x86	x64
Memory	2 GB	4 GB+
Network Card	1x 2Mbps+ NIC	1x 10Mbps+ NIC
Display(s)	1x 1024x768	1 x 1920x1080
Hard Drive	1 GB available space	5 GB available space
Graphics Card	N/A	N/A
Bandwidth	2 Mbps	5+ Mbps

1.2 RMS Workstation Site Internet Requirements

The Mark43 platform operates as a single-page application where most of the heavy download load is needed only on initial page load for each user. Mark43 recommends for the RMS application an overall internet bandwidth connection of 1+ Mbps per concurrent user using that connection. Actual performance and usage may vary greatly depending on user usage of other internet-connected applications and your ISP.

1.3 RMS Browser Requirements

Mark43 RMS is web-based and requires a modern web browser to access the system. Mark43 RMS supports all versions of Microsoft Internet Explorer and Google Chrome that receive technical support and security updates from the browser vendor.

- Google Chrome (latest)
- Microsoft Internet Explorer: All versions of Microsoft Internet Explorer that receive technical support and browser updates. (As of 10/15/2017 this is IE 11+, Microsoft Edge)

1.4 RMS Mobile Data Terminal Requirements

Item	Minimum	Recommended
Operating System	Windows 7+, Mac OS X 10.X	Windows 10, Mac OS 10.X
Processor	1x dual-core processor	1x dual-core processor or greater
Architecture	x64 / x86	x64
Memory	2 GB	4 GB+
Network Card	2 Mbps (4G LTE)	5+ Mbps (4G LTE)
Display(s)	1x 1024x768	1x 1024x768+
Hard Drive	1 GB available space	5 GB available space
Graphics Card	N/A	N/A

2. MARK43 CAD

2.1 CAD Call Taker / Dispatcher Workstations

Mark43 recommends solely using the Mark43 CAD installed windows application for CAD call takers and dispatchers. The installed application allows for multi-window functionality and a more seamless user experience for power-users of the CAD application.

Item	Minimum	Recommended
Operating System	Windows 7+, Mac OS X 10.X	Windows 10, Mac OS 10.X
Processor	1x dual-core processor	1x quad-core processor or greater
Architecture	x64	x64
Memory	4 GB	8 GB+
Network Card	1x 2Mbps+ NIC	1x 10 Mbps+ NIC
Display(s)	1 x 1024x768 monitor	2x+ 1920x1080 monitors
Hard Drive	1 GB available space	5 GB available space
Graphics Card	N/A	2x 512MB NVIDIA Quadro NVS 310, 4 MON
Bandwidth	2 Mbps	10+ Mbps

2.2 CAD Call Taker / Dispatcher Workstation Site Internet Requirements

The Mark43 platform operates as a single-page application where most of the heavy download load is needed only on initial page load for each user. Mark43 highly recommends for the CAD application an overall internet bandwidth connection of 2+ Mbps per concurrent user using that connection and a backup ISP connection with automatic failover. Actual performance and usage may vary greatly depending on user usage of other internet-connected applications and your ISP.

2.3 CAD First Responder Mobile Data Terminal Requirements

Item	Minimum	Recommended
Operating System	Windows 7+, Mac OS X 10.X	Windows 10, Mac OS 10.X
Processor	1x dual-core Processor	1x dual-core processor or greater
Architecture	x64	x64
Memory	2 GB	4 GB+
Network Card	2 Mbps+ (4G LTE)	5 Mbps+ (4G LTE)
Display(s)	1 x 1024x768	1 x 1024 x 768
Hard Drive	1 GB available space	5 GB available space
Graphics Card	N/A	N/A
Bandwidth	2 Mbps+ (4G LTE)	5 Mbps+ (4G LTE)

2.4 Mark43 CAD Web Application (First Responder & Dispatch)

Mark43 CAD is also web-based and requires a modern web browser to access the system. Mark43 CAD is only supported for the latest version of Google Chrome. All other users are recommended to use the installed version of the application.

2.5 GPS Pinger

Item	Minimum	Recommended
Operating System	Windows 7+	Windows 10
Architecture	x32	x64
Network Card	2 Mbps+ (4G LTE)	5 Mbps+ (4G LTE)

Other requirements:

- Powershell that is installed with Windows 7+
- .Net Framework v.2.0.50727 or v.4.0
- Java jre 8u162
- To support legacy passthrough, com0com driver required and dedicated COM ports set up
- Admin access is required for installation
- Service account set up with "Log in as service" permissions
- Verified Hardware:
 - * Getac machines with internal GPS (BAUD rate of 96k)
 - * BU-353S4 receivers that plug in
- Supported:
 - * GPS Receiver using NMEA standard (that is to say \$GPxxx messages) with a dedicated COM port
- External Antenna (strongly recommended)

3. MARK43 EVIDENCE MANAGEMENT

3.1 Evidence Workstation Requirements

Evidence workstation requirements mirror the RMS workstation requirements. As evidence is loaded as a module of the RMS.

Item	Minimum	Recommended
Operating System	Windows 7+, Mac OS X 10.X	Windows 10, Mac OS 10.X
Processor	1x dual-core processor	1x dual-core processor or greater
Architecture	x64 / x86	x64 / x86
Memory	4 GB	6 GB+
Network Card	1x 2Mbps+ NIC	1x 10Mbps+ NIC
Screen Resolution	1024x768	1920x1080
Hard Drive	1 GB available space	5 GB available space
Display(s)	1x 1024x768 monitor	1x 1920x1060
Graphics Card	N/A	N/A
Bandwidth	2 Mbps	5+ Mbps

3.2 Evidence Smartphone Mobile Application

- **Platforms:**
 - o Android version 5+
- **Recommended Device:**
 - o Samsung Galaxy S7+

3.3 Evidence Barcode Printer Requirements

Mark43 Evidence product requires a barcode printer to optimize the evidence management process. Mark43 integrates seamlessly with Zebra barcode printing hardware and requires the following printer:

- GX430T model number GX43-102410-000
- 2000T labels
- 5100 Premium Resin Ribbon

3.4 Evidence Printer Server Requirements

The complexity with barcode printing stems from making our website communicate with physical hardware on premises with our clients. We cannot rely on Chrome/Internet Explorer's built in printing functionality because they do not support the Zebra printing language we use for labels. In order to communicate with the barcode printers we will need an intermediate server to route printing requests. The machine will need the following specifications:

- 2 GB RAM
- 32 GB HDD Storage
- 2 x 2.0+ GHz Processors

4. MARK43 DATA EXCHANGE

The Mark43 Data exchange functionality is enabled through either the RMS or CAD applications. Additional interface servers may be required to support Mark43 Data Exchange data flows, depending on the department's size and complexity.

5. MARK43 INTERFACE SERVERS

If 3rd party integrations are required, interface server(s) may be installed on site. The requirements of an interface server are as follows. The recommended number of interface servers needed depends on the interface requirements of the agency as well as the number of users supported by the data exchange product.

Item	Minimum	Recommended
Operating System	Ubuntu Linux (latest LTS)	Ubuntu Linux (latest LTS)
Processor speed & quantity	4x CPUs	8x+ CPUs
Architecture	x64 / x86	x64 / x86
Memory	8 GB	16+ GB
Network Card	1x 100 Mbps NIC	2x 1Gbps NICs
Display(s)	N/A	N/A
Hard Drive	250 GB	500 GB
Graphics Card	N/A	N/A

SCHEDULE D

Additional Terms

Google: Users are bound by the Google Maps/Google Earth Additional Terms of Service (including the Google Privacy Policy), available by following these links:

Google Maps Terms: https://maps.google.com/help/terms_maps.html

Google Privacy Policy: <https://policies.google.com/privacy?hl=en&gl=us>

Acceptable Use: https://enterprise.google.com/maps/terms/universal_aup.html

Amazon:

Universal Service Terms: <https://aws.amazon.com/service-terms/>

Acceptable Use: <https://aws.amazon.com/aup/>



**MONTCLAIR CITY COUNCIL
COMMITTEE/LIAISON ASSIGNMENTS**

2018-2020

<i>City Council Committees</i>	<i>Member</i>	<i>Member</i>
Code Enforcement/Public Safety	Raft	Johnson
Community Activities Commission Interview Panel	Ruh	Johnson
Education		Ruh
Human Services	Ruh	
Legislative/Intergovernmental	Ruh	Dutrey
Personnel	Ruh	Raft
Planning Commission Interview Panel	Johnson	Raft
Public Works		Raft
Real Estate	Raft	Dutrey
Tri-City Gold Line	Ruh	Dutrey
<i>City Council Liaisons</i>	<i>Member</i>	<i>Member</i>
Chamber of Commerce		Johnson
Community Activities Commission	Ruh	Johnson
Planning Commission	Johnson	Raft
<i>Interagency Committees</i>	<i>Member</i>	<i>Alternate</i>
Gold Line Phase II Joint Powers Authority Board	Ruh	Johnson
Omnitrans	Dutrey	
San Bernardino County Transportation Authority (SBCTA)	Dutrey	Johnson
IEUA Regional Sewerage Program Policy Committee		Johnson
<i>External Organizations</i>	<i>Member</i>	<i>Alternate</i>
City Selection Committee (San Bernardino County)	Mayor	Appointee
League of California Cities - Inland Empire Division		Ruh
League of California Cities - State	Ruh	
National League of Cities	Ruh	Johnson
So. Cal. Assoc. of Governments - General Assembly	Dutrey	
West Valley Mosquito and Vector Control District	Raft	None
<i>External Committees</i>	<i>Member</i>	<i>Alternate</i>
Chamber of Commerce Legislative Committee	Ruh	
SBCTA Metro Valley Study Session	Dutrey	Johnson
SBC Mayors and City Managers Task Force	Dutrey	Starr (staff)
SBC Solid Waste Advisory Task Force (SWAT)	Raft	Kulbeck (staff)

MINUTES OF THE CITY OF MONTCLAIR REAL ESTATE
COMMITTEE MEETING HELD ON MONDAY, OCTOBER 21,
2019 AT 6:00 P.M. IN THE CITY HALL CONFERENCE
ROOM, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Chair Dutrey called the meeting to order at 6:00 p.m.

II. ROLL CALL

Present: Mayor Dutrey (Chair); Mayor Pro Tem Raft (Vice Chair); City Manager Starr; Director of Community Development/City Planner Diaz; Assistant Director of Housing/Planning Manager Caldwell; Associate Planner Gutierrez; Public Works Director/City Engineer Castillo; Senior Management Analyst Fuentes; City Attorney Robbins; City Clerk Phillips

III. APPROVAL OF MINUTES

A. REAL ESTATE COMMITTEE — August 19, 2019

The Committee approved the August 19, 2019 minutes of the Real Estate Committee meeting.

IV. PUBLIC COMMENT — None

V. DISCUSSION ITEMS

A. DEVELOPMENT PROPOSALS

1. PROJECTS OFFICIALLY SUBMITTED FOR FORMAL CITY REVIEW

- MacArthur Park

The Committee reviewed a Conditional Use Permit request from Crown Castle for a cell tower relocation that is necessary due to the I-10 widening project. The cell tower, located at MacArthur Park, 5450 Deodar Street, would be moved several feet away from the wall where it currently exists, and the design will be updated to add more branches and foliage to the tree design of the tower.

- 9150 Benson Avenue

The Committee reviewed a proposed upgrade by Giant RV for its existing electronic message center sign.

- 5391- 5459 Moreno Drive

The Committee reviewed the proposed design for the replacement of an existing freeway-oriented identification sign for Montclair East Shopping Center.

2. PROJECTS SUBMITTED FOR INFORMAL CITY REVIEW

- **5477 Palo Verde Street (JJ Properties & Investments, LLC)**

The Committee reviewed the proposed construction of a 1,615 sf single-story single-family residence with an attached 441 sf two-car garage and a freestanding 700 sf accessory dwelling unit on a vacant lot 8,442 sf lot.

- **5479 Palo Verde Street (Kumar Swaminathan)**

The Committee reviewed the proposed construction of a 3,109 sf two-story single-family residence with an attached 494 sf, two-car garage on a vacant 8,442 sf vacant lot.

B. PROPOSED PUBLIC IMPROVEMENTS

1. I-10 Freeway Monument Signs

The Committee reviewed preliminary monument sign designs at the I-10 freeway on-ramps, which are being constructed and paid for by **Caltrans** and the **San Bernardino County Transportation Authority** as part of the I-10 widening project.

C. CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT GRANT (SENATE BILL 2)

1. SB 2 Grant Funding Priorities

The Committee reviewed a proposed list of SB 2 grant funding priorities, noting that the City would be eligible to be reimbursed up to a maximum of \$160,000 .

VI. OTHER ITEMS — None

VII. ADJOURNMENT

At 6:08 p.m., Chair Dutrey adjourned the Real Estate Committee. The Committee is scheduled to next meet on Monday, November 18, 2019.

Submitted for Real Estate Committee approval,



Andrea Phillips, City Clerk

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
NOVEMBER 18, 2019, AT 7:55 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Pro Tem Raft called the meeting to order at 7:55 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Raft, Council Member Ruh, and City Manager Starr

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of November 4, 2019.

Moved by Council Member Ruh, seconded by Mayor Pro Tem Raft, and carried unanimously to approve the minutes of the Personnel Committee meeting of November 4, 2019.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

At 7:56 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 8:10 p.m., the Personnel Committee returned from Closed Session. Mayor Pro Tem Raft stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 8:10 p.m., Mayor Pro Tem Raft adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager